

much thereof as may be necessary to pay the expenses of submitting such amendment to the people."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it be not passed and be not printed, but that the attached Committee Substitute do pass and be printed in bill form.

BLACKERT, Chairman.

FIFTY-SEVENTH DAY.

(Continued.)

Senate Chamber,
Austin, Texas,
May 7, 1935.

Senate met at 10 o'clock a. m., pursuant to recess, and was called to order by Lieutenant Governor Walter F. Woodul.

House Bill No. 65.

Pending business was H. B. No. 65 with pending amendment by Senator Martin.

H. C. R. No. 121.

The Chair laid before the Senate:
By Mr. Calvert:

H. C. R. No. 121, Suspending Joint Rules Nos. 23, 24 and 32 for the purpose of taking up for consideration until the final disposition thereof H. B. Nos. 929 and 930.

The Senate rule requiring resolutions to be referred to a committee was suspended, and H. C. R. No. 121 was taken up and considered at this time by unanimous consent.

H. C. R. No. 121 was adopted by viva voce vote.

H. C. R. No. 112.

The Chair laid before the Senate:
By Mr. Lemens:

H. C. R. No. 112, Suspending Joint Rule No. 23 for the purpose of taking up for consideration until the final disposition thereof H. B. No. 345.

The Senate rule requiring resolutions to be referred to a committee was suspended, and H. C. R. No. 112 was taken up and considered at this time by unanimous consent.

H. C. R. No. 112 was adopted by viva voce vote.

H. C. R. No. 115.

The Chair laid before the Senate:

By Mr. Stinson:

H. C. R. No. 115, Suspending Joint Rules 22, 23 and 24 and all other joint rules of the House and Senate in order that the House may take up and consider until disposed of, H. B. No. 396.

Senator Rawlings asked unanimous consent that the Senate rule requiring resolutions to be referred to a committee be suspended, and that H. C. R. No. 115 be taken up and considered at this time.

Unanimous consent was granted.

H. C. R. No. 115 was adopted by the following vote:

Yeas—15.

Beck.	Neal.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Rawlings.
Cotten.	Small.
Duggan.	Stone.
Hornsby.	Woodruff.
Isbell.	

Nays—6.

DeBerry.	Martin.
Hill.	Poage.
Holbrook.	Sulak.

Present—Not Voting.

Westerfeld.

Absent.

Davis.	Sanderford.
Hopkins.	Shivers.
Moore.	Van Zandt.
Redditt.	

Absent—Excused.

Fellbaum.	Regan.
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H. C. R. No. 117.

Senator Woodruff moved to suspend the regular order and take up:
By Mr. Lanning:

H. C. R. No. 117, Suspending Joint Rule No. 23 for the purpose of taking up until the final disposition thereof H. B. No. 454.

The motion failed, not having received the required two-thirds vote as shown by the following roll call:

Yeas—15.

Beck.	Poage.
Blackert.	Rawlings.
Collie.	Shivers.
Hill.	Small.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Oneal.	Woodruff.
Pace.	

Nays—7.

Burns.	Holbrook.
Cotten.	Martin.
DeBerry.	Stone.
Duggan.	

Present—Not Voting.

Neal.	Sulak.
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Absent.

Davis.	Redditt.
Hopkins.	Sanderford.
Moore.	

Absent—Excused.

Fellbaum.	Regan.
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Messages From the House.

The Chair recognized the Door-keeper, who introduced a messenger the House with the following messages:

Hall of the House of Representatives,
Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has granted the request of the Senate for the appointment of a conference committee to consider the differences between the two Houses on S. B. No. 17. The following are conferees on the part of the House:

McCalla, Greathouse, Adkins, McKinney, and Spears.

The House has adopted the following resolutions:

H. C. R. No. 130, Suspending Certain Joint Rules of the House and the Senate for the purpose of considering until the final disposition thereof H. B. No. 745.

H. C. R. No. 131, Suspending Certain Joint Rules of the House and the Senate for the purpose of disposing

thereof finally H. B. No. 193 and 198.

The House has passed the following resolutions:

S. C. R. No. 53, Recalling from the Governor's Office S. B. No. 227 for the purpose of correction and further consideration.

H. C. R. No. 129, Suspending Certain Joint Rules for the purpose of considering in the House until the final disposition thereof H. B. No. 944.

The House has concurred in Senate amendments to H. C. R. No. 119 by a viva voce vote.

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that in compliance with the provisions of H. C. R. No. 75, providing for a committee to select a Poet Laureate, etc., the following have been appointed on the part of the House:

Walker, Wood of Montague.

The House has passed the following bills:

S. B. No. 485, A bill to be entitled "An Act authorizing banking institutions to issue and sell capital notes or debentures; subordinating same to other claims; defining the term "capital" as used in the Banking Laws relating to solvency of state banks to embrace the amount of capital notes and debentures outstanding; providing that the capital stock of a banking institution shall be deemed unimpaired when the amount of said capital notes or debentures as represented by cash or sound assets exceeds any impairment as found by the State Banking Commissioner; requiring any existing deficiency in capital to be paid in cash before retiring said capital notes or debentures and providing for assessment to meet deficiencies in the redemption fund for capital notes and debentures; exempting them from any obligation of such institutions and from any assessments to restore impairment of their capital; and declaring an emergency."

S. B. No. 486, A bill to be entitled "An Act to authorize any bank, trust, company, bank and trust company,

banking association, stock savings bank or mutual savings bank now or hereafter organized under the laws of this State or the conservator, receiver or liquidator thereof, with the consent and approval of the Banking Commissioner, to enter into such contracts, incur such obligations and generally to do such acts as may be appropriate or necessary to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may, at any time be available or inure to said banking institutions or their depositors or stockholders, or their conservators, liquidators, or receivers, by virtue of any act or resolution of the Congress of United States to aid, regulate or safeguard banking institutions and depositors, including the Act creating the Federal Deposit Insurance Corporation; and declaring an emergency."

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President
of the Senate.

Sir: I am directed by the House to inform the Senate that the House has adopted the Conference Committee report on S. B. No. 146 by a vote of 85 yeas and 44 nays.

H. C. R. No. 133, Suspending the Joint Rules Nos. 23, 24 and 32 for the purpose of allowing the House to take up and consider H. B. No. 995 until final disposition.

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President
of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolutions:

H. C. R. No. 134, Suspending the Joint Rules 22, 23 and 32 for the purpose of allowing the House to take up and consider until final disposition H. B. No. 998.

H. C. R. No. 136, Suspending the Joint Rules 22, 23 and 32 for the purpose of allowing the House to take up and consider until final disposition H. B. No. 836.

H. C. R. No. 137, Suspending the Joint Rules 23, 24 and 32 for the purpose of allowing the House to take up and consider until final disposition H. B. No. 999.

H. C. R. No. 139, Suspending the Joint Rule No. 23 for the purpose of allowing the House to take up and consider until final disposition H. B. No. 988.

H. C. R. No. 141, Suspending the Joint Rules Nos. 22, 23 and 24, for the purpose of allowing the House to take up and consider until final disposition H. B. No. 190.

H. C. R. No. 143, Suspending the Joint Rules Nos. 23, 24 and 32 for the purpose of allowing the House to take up and consider until final disposition H. B. No. 914.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

H. B. No. 601, A bill to be entitled "An Act making it unlawful for any person, firm, association, or corporation to pack for sale, sell, or offer for sale, wheat flour or other cereal, flour, and corn meal only in standardized packages; providing for the size and net weight of said packages; providing for the net weight, name of manufacturer and the name of the place where milled to be printed on the outside of each package, and making it unlawful for wheat flour, other cereal flour and corn meal to be packed for sale, offered for sale, or sold within this State unless it shall be so labeled, etc., and declaring an emergency."

S. B. No. 477, A bill to be entitled "An Act amending Article 2982, Revised Civil Statutes of Texas, 1925, and declaring an emergency."

H. B. No. 996, A bill to be entitled "An Act making an emergency appropriation for the Texas State Prison System for the purpose of returning to relatives, bodies of convicts whose families are in indigent circumstances, and declaring an emergency."

S. B. No. 501, A bill to be entitled "An Act authorizing the creation of The Texas National Guard Armory Board, defining its personnel, the duties and functions of said board, making an appropriation, and declaring an emergency."

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Message From the Governor.

The Chair recognized the Door-keeper, who introduced a messenger from the Governor with the following message:

Executive Office,

Austin, Texas, May 7, 1935.

To the 44th Legislature:

I have today signed and approved H. B. No. 11 which appropriates three million dollars for a Centennial celebration. Since no provision is made for retirement of this debt, I desire to make a statement not only with reference to this appropriation, but others which may come to my desk.

The people of Texas by direct referendum gave the Legislature a mandate to provide for a real Centennial observance of the achievements of our forebears. Pursuant to this mandate, a preceding Legislature set up the machinery to determine where the main celebration should be had. As a result, the people of Dallas have voted bonds, and already the program is under way. Word has gone forth to the world that Texas expects to make 1936 a banner Centennial year. The Legislature has seen fit to pass this Act and, for these reasons, in my judgment, it would be breaking faith for me to disapprove it. After careful consideration, I have therefore concluded it is my duty to sign this bill.

Shortly after this bill came to my desk, in reply to the inquiry of newspaper men, I stated that the question in my mind was "where is the money coming from?" Upon reflection, I have concluded that this is the Legislature's problem—not the Governor's.

This same inquiry applies to the appalling deficit to which your attention was respectfully directed at the beginning of the session. It is not the part of wisdom to spend money unless you have it, either in the treasury or know where it is coming from.

We are going through a finish fight against "hot" oil and for sound State home rule. I dislike in signing appropriation bills to face a future of State "hot" checks and unsound State home rule. It will be in this spirit that I either veto or give my signature to various bills.

The people must, of course, depend on the Legislature to provide reve-

nues. In my judgment, a sound Legislature will not leave Austin without providing for money they have ordered spent.

The Legislature has determined to adjourn on May 11th. That is your constitutional prerogative and I have no desire to attempt to dictate to you. The Governor, however, has certain constitutional prerogatives and duties. Among these: he is privileged and required to communicate to you from time to time his views on public questions.

May I therefore respectfully remind you that much remains to be done before you shall have discharged your oaths of office.

The Legislature can provide revenues; the Governor cannot. The Legislature can give tax relief; the Governor cannot. He can only recommend, and that I have done in detail. I must ask, and I think the people expect, this Legislature not to adjourn until it has provided money for its worthy appropriations.

When the framers of the Constitution (and of the amendment adopted five years ago) provided that the Legislature should remain over at half pay after the expiration of the regular session they evidently contemplated that sometime the interests of the public might require the members, as patriots, to remain in session until unfinished business is disposed of. We may as well be frank about it. Even aside from revenue raising measures, other important questions, dealt with in the Party platform and in individual campaigns of many members, somehow, for reasons best known to you, have not been voted upon.

Is it asking too much of this Legislature to suggest that the people are entitled to have these important matters at least voted upon? If they are disposed of at this regular session there will be no necessity for calling the Legislature back at the regular rate of \$10.00 a day, and mileage, at an enormous expense to the taxpayers, to vote on questions already decided. Surely no harm can come from each legislator expressing himself upon matters so greatly affecting the public interest.

Most important of all problems which assuredly should be dealt with before adjournment is that of provision for relief of the unfortunate people of this State after the present

twenty million dollar bond issue shall have been exhausted. It is commonly known that all unemployables within the State will shortly be turned back upon local communities. Under present constitutional authority and laws, neither the State nor the municipality has authority to provide for emergencies almost certain to arise.

Bear in mind that constitutional amendments can only be submitted at a regular session of the Legislature; and if you adjourn without needful action, we will be helpless until after the convening of the next regular session of the Legislature. I cannot too earnestly again urge this Legislature to submit proper constitutional amendments for early vote of the people to authorize the Legislature, as well as local communities, to make provision for relief.

By the Centennial bill you have authorized fitting testimonials to pioneering generations of the past. It is our duty to make adequate provision for the needs of the living!

I am sure the patriotic members of this Legislature are tired and worn out. So am I. But I don't want a special session of the Legislature, now or hereafter, if it can be avoided. I, therefore, feel that all of us should extend ourselves and redouble our efforts to the end that the people's business may be attended to. I respectfully urge you to reconsider your decision to adjourn before these problems are disposed of. Let's avoid a special session!

These suggestions are made in a cooperative spirit of harmony for the public welfare.

Respectfully submitted,
JAMES V. ALLRED.
Governor of Texas.

Read.

Bills and Resolutions Signed.

The Chair, Lieutenant Governor Walter F. Woodul, gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following bills and resolutions:

H. B. No. 754.	H. B. No. 749.
H. B. No. 730.	S. C. R. No. 52.
H. J. R. No. 19.	S. C. R. No. 53.
H. C. R. No. 119.	S. B. No. 485.
H. C. R. No. 121.	S. B. No. 486.
H. C. R. No. 122.	S. B. No. 510.

Bills Referred.

H. B. No. 601 was referred to the Committee on State Affairs.

H. B. No. 996 was referred to the Committee on Finance.

Senate Bill No. 532.

Senator Small received unanimous consent to suspend the regular order and sent up the following local bill:

By Senator Small:

S. B. No. 532, A bill to be entitled "An Act creating the Palo Duro Canyon State Park Board; providing for the number of members of said Board, terms of office, the manner of appointment and the duties and responsibilities of the members; transferring all property heretofore acquired for the Palo Duro Canyon State Park and the Palisades State Park to said Park Board, and prescribing the powers, duties and responsibilities of said Board; authorizing the appointment of a Treasurer for said Board and requiring a bond and prescribing the duties of the treasurer; conferring upon said Board the power of eminent domain, and declaring an emergency."

Read and referred to the Committee on Civil Jurisprudence.

House Bill No. 65.

Pending business was H. B. No. 65 and pending amendment by Senator Martin.

Senator Martin moved the adoption of the amendment.

Motion to Table.

Senator DeBerry moved to table the pending amendment by Senator Martin.

The motion to table prevailed by the following vote:

Yeas—16.

Blackert.	Pace.
Burns.	Poage.
Collie.	Rawlings.
DeBerry.	Redditt.
Hill.	Shivers.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Oneal.	Woodruff.

Nays—11.

Beck.	Duggan.
Cotten.	Holbrook.

Hopkins.	Sanderford.
Martin.	Small.
Moore.	Stone.
Neal.	

Present—Not Voting.

Sulak.

Absent.

Davis.

Absent—Excused.

Fellbaum.

Regan.

Senator Martin sent up the following amendment:

Amend H. B. No. 65, page 1, Section 2, by striking out of said section the word "Telephone" and amend the caption to conform.

MARTIN.

Read and adopted.

Senator Woodruff sent up an amendment to H. B. No. 65 which was H. B. No. 365 as it was finally passed by the House:

Amend H. B. No. 65 by striking out all below the enacting clause and substituting in lieu thereof the following:

Section 1. Definitions. (a) The term "corporation," when used in this Act, includes a private corporation, an association, a joint stock company, a business trust or any other form of private business unit.

(b) The terms "person" when used in this Act, includes a natural person, a partnership, or two (2) or more persons having a joint or common interest, and a corporation as hereinbefore defined.

(c) The term "municipality," when used in this Act, includes a city, a city and county, a county, a village, a town, and any other public corporation existing, created or organized as a governmental unit under the Constitution or laws of the State of Texas.

(d) The term "public utility," when used in this Act, includes persons and corporations, or their lessees, trustees and receivers, now or hereafter owning or operating in this State equipment or facilities for:

(1) Producing, generating, transmitting, delivering or furnishing electricity, or steam, either directly or indirectly through or by means of

their own facilities or otherwise to or for the public for compensation.

Delivering or furnishing gas either directly or indirectly through or by means of their own facilities or otherwise to or for the public for compensation.

(2) Transporting or conveying gas by pipe line when such gas is, either directly or indirectly, through or by means of their own facilities or otherwise, to be delivered to the public for compensation.

(3) Conveying or transmitting messages or communications by telephone, where such service is offered to the public for compensation.

(4) The term "public utility" shall include any person producing, generating, or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

The term "public utility" shall not include any person who furnishes the utility services or commodity without profit only to himself, his employees, or tenants when such service or commodity is not resold to or used by others. The business of any public utility other than of the character defined in Subdivisions 1 to 4, inclusive, of Subdivision (d) of this Section, is not subject to the provisions of this Act.

(e) The term "rate," when used in this Act, means and includes every compensation, charge, fare, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity offered by it to the public.

(f) The word "Board," when used in this Act, means the Board of Public Utility Commissioners of Texas, as hereinafter constituted.

(g) The term "affiliated interests," when used in this Act includes:

(1) Every corporation and person owning or holding, directly or indirectly, five (5) per centum or more of the voting capital stock of such public utility.

(2) Every corporation and person in any chain of successive ownership of five (5) per centum or more of voting capital stock.

(3) Every corporation, five (5) per centum or more of whose voting capital stock is owned by any person or corporation owning five (5) per

centum or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of five (5) per centum or more of voting capital stock.

(4) Every corporation, five (5) per centum or more of whose voting securities is owned, directly or indirectly, by such public utility.

(5) Every person who is an elective officer or director of such public utility or of any corporation in any chain of successive ownership of five (5) per centum or more of voting capital stock.

(6) Every corporation which has one or more elective officers or one or more directors in common with such public utility.

(7) Every corporation or person which the Board may determine as a matter of fact, after investigation and hearing, is actually exercising any substantial influence over the policies of such public utility, even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this Section.

(8) Every person or corporation who or which the Board may determine as a matter of fact, after investigation and hearing, is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with such public utility within the meaning of this Section even though no one of them alone is so affiliated.

Provided however, that no such person or corporation shall be considered as affiliated within the meaning of this Section if such person or corporation is otherwise subject to the jurisdiction of the Board or if such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such public utility during the two (2) year period past next preceding.

(h) The term "holding company," when used in this Act, shall mean and include firms, partnerships, companies, corporations, individuals and associations made up in whole or in part of individuals, firms, partners,

companies, trusts at common law, corporations or any other legal entities, their lessees, trustees or receivers appointed by any Court whatsoever, in the singular number as well as in the plural, who own or control as much as five (5) per centum in number or amount of the outstanding shares of common stock of any utility engaged in any intrastate business in this State.

(i) The word "common stock," as used herein shall mean and include any and all stock, shares, or interest in any such utility of such nature that the ownership or control of a majority of the stock, shares or interest, in number and amount, or in number and amount thereof, vests the control and management of such utility in the holders or owners thereof.

Sec. 2. Organization of Board.

(1) A Board, to be known as the "Board of Public Utility Commissioners of Texas," is hereby created. It shall consist of three (3) members, who shall be appointed by the Governor, with the approval of the Senate, and shall have and exercise the jurisdiction and powers herein conferred upon the Board. Immediately after this Act takes effect, the Governor shall, with the approval of the Senate, appoint one member of the Board, whose term shall expire with the inauguration of the Governor in 1937; and one member whose term shall expire with the inauguration of the Governor in 1939; and one member whose term shall expire with the inauguration of the Governor of 1941. Biennially thereafter the incoming Governor shall appoint in the same manner, one member of the Board to hold office for the term of six (6) years. Each member shall hold office until his successor is appointed and qualified. The Governor shall designate one member as Chairman of the Board, and he shall serve in that capacity until he ceases to be a member of the Board, at which time the Governor shall again designate one member as Chairman of the Board.

(2) Before entering upon the duties of his office, each member of the Board shall take and subscribe to the Constitutional oath of office, and shall, in addition thereto, swear that he is not pecuniarily interested in any public utility as herein de-

fined, in any manner whatsoever; and if any such member thereafter voluntarily becomes thus pecuniarily interested in any public utility, he shall thereby forfeit his office and shall be removed by quo warranto proceedings instituted by the Attorney General, or by the District or County Attorney in any District Court of Travis County, Texas; and the Governor shall fill such vacancy as in other cases provided by law. If any member becomes thus pecuniarily interested in any public utility either during his term of office or within two (2) years thereafter, he shall be deemed guilty of a felony, and upon conviction therefor shall be punished by a fine of not less than Two Thousand Dollars (\$2,000) nor more than Ten Thousand Dollars (\$10,000), or by imprisonment in the State Penitentiary for not less than two (2) years nor more than ten (10) years, or by both such fine and imprisonment. If any member becomes pecuniarily interested in any public utility otherwise than voluntarily, he shall, within a reasonable time, divest himself of such interest; failing to do so, he shall thereby forfeit such office and shall be removed by quo warranto proceedings instituted by the Attorney General, or by the District or County Attorney in any District Court in Travis County, Texas; and the Governor shall fill such vacancy as in other cases provided by law. No member shall hold any elective office for two (2) years after he has ceased to be a member of the Board; any individual who violates this provision shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than Two Thousand Dollars (\$2,000) nor more than Ten Thousand Dollars (\$10,000).

(3) The Legislature, by a two-thirds vote of all members elected to each House, may remove any one or more members of the Board from office for dereliction of duty, or for corruption or incompetency.

(4) Whenever a vacancy in the office of a member of the Board occurs, it shall be filled in the manner provided herein with respect to original appointment, except that the Governor may make interim appointments to continue until the vacancy shall be filled in the manner pro-

vided; and any person appointed to fill a vacancy shall hold office during the unexpired portion of the term.

(5) The annual salary of each member of the Board shall be Eight Thousand Dollars (\$8,000.)

(6) The Board shall have the power to appoint and/or discharge the following assistants:

(a) A chief counsel at a salary of Six Thousand Dollars (\$6,000) per annum; a chief engineer at a salary of Six Thousand Dollars (\$6,000) per annum; a chief auditor at a salary of Six Thousand Dollars (\$6,000) per annum; and a chief statistician at a salary of Six Thousand Dollars (\$6,000) per annum; a secretary at a salary of Three Thousand, Six Hundred Dollars (\$3,600) per annum; and such examiners as it may require, not to exceed three (3), at a salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600) each, per annum.

All above salaries to be for the biennium ending August 31, 1937 only; after which, all salaries shall be stipulated in the Departmental Appropriation Bill.

(b) To assist the Board and its appointees herein named in the performance of their duties, the Board may appoint, employ and/or discharge not exceeding three (3) assistant counsellors, three (3) assistant engineers, three (3) assistant statisticians, three (3) assistant auditors, and three (3) assistant secretaries, each of whom shall receive a salary not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum, and who shall hold office during the pleasure of the Board.

(c) The Board may, whenever the need therefor shall in its opinion exist, employ such stenographers and clerical assistants as it thinks necessary, who shall not receive a salary in excess of salaries paid for the same work in other departments as set in the Departmental Appropriation Bill.

(d) In addition to the above specified assistants the Board may, whenever in its opinion the need therefor exists, in order to carry out the provisions of this Act, employ for such period or periods as the Board may specify such other engineers, accountants, statisticians, counselors, clerks or any other technicians

or assistants whose services are reasonably necessary to the efficient, economical, and adequate performance of its functions, and the enforcement of this Act. The salaries of such employees shall not exceed the schedule of salaries set forth in (a), (b), and (c) above.

(e) Except for the appointment of a chief counsel, a chief engineer, a chief auditor, a chief statistician and a secretary, all of these being listed in paragraph (a) under Subsection 6 in Section 2 hereof, the appointment, discharge and promotion of all other employees shall be carried on by means of a merit system which shall be provided for as follows:

The Board shall classify all positions into two (2) groups, the competitive and noncompetitive. The competitive class shall include those positions which require necessary technical skill and training and experience in a particular field and for which examinations are impracticable. Appointments to this class shall be made after applicants have made personal appearances before the Board so that it may determine mental fitness, past experience, necessary training and moral and/or character fitness of applicants.

The competitive class shall include all clerical and stenographic positions and such other positions for which examinations are practicable. Appointments to this class shall be made from the two (2) highest on the eligible list of applicants who have made at least a grade of seventy (70) on examinations which shall be practical and shall consist only of subjects which fairly determine the capacity and ability of the persons being examined; such tests may be written and oral or written only. Vacancies shall be filled, so far as possible, by promotion which shall be based on merit, competition, superiority and seniority.

Discharges shall be made by the Board or its respective chiefs; but a written authorization containing reasons therefor shall be filed in its records, and a copy transmitted to the discharged person. Such discharges shall be final. Employees may be discharged on account of:

- (1) incompetency or inefficiency;
- (2) dishonesty, immorality or bad

behavior; and for (3) political activity as hereinafter defined:

Political activity, for the purposes of this Section, shall include: Contributing money, personal services or anything of value toward securing the nomination and/or election of any candidate for national, State or local office; provided, however, that nothing in this Act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization or from attendance upon political meetings, from enjoying entire freedom from all interference in casting his vote or from seeking or accepting election or appointment to public office. The Board shall prescribe such other rules regarding political activity not inconsistent with the terms set out herein.

Moreover, the Board may prescribe such other rules and regulations as it deems necessary for the enforcement of the merit system.

(f) Each of the above named assistants and employees of the Board shall perform such duties and services as the Board may require of him. No assistant or employee of the Board shall have any pecuniary interest in any public utility subject to this Act or to the jurisdiction of the Board.

(g) Each of the above specified salaries shall be paid in equal monthly installments out of the Public Utility Board Fund hereinafter provided for.

(7) The Board shall have a seal bearing the following inscription: "Board of Public Utility Commissioners of Texas." The seal shall be affixed to all authentications of copies of records, and to such other instruments as the Board shall direct. All Courts of this State shall take judicial notice of said seal.

(8) The principal office of the Board shall be in the City of Austin, and shall be open daily during the usual business hours, Sundays and legal holidays excepted. The Board shall hold its meetings at its office, and at such other convenient places in the State as shall be expedient and necessary for the proper performance of its duties.

(9) A majority of the members shall constitute a quorum for the transaction of any business, for the

performance of any duty, or for the exercise of any power of the Board. No vacancy in the Board shall impair the right of the remaining members to exercise all of the powers of the Board. The act of a majority of the members shall be the act of the Board; but any investigation, inquiry, or hearing which the Board has power to undertake or hold may be undertaken or held by or before any member or members, or examiner designated for the purpose by the Board. The evidence in any investigation, inquiry, or hearing may be taken by the member or members or examiner to whom such investigation, inquiry or hearing has been assigned. Every finding, opinion and order made by the member or members, or examiner so assigned, pursuant to such investigation, inquiry or hearing, when approved or confirmed by the Board, shall be the finding, opinion and order of the Board.

Each member of the Board shall have the power to administer oaths and affirmations, and any person swearing falsely before the Board or any member thereof shall be guilty of false swearing or perjury and shall be punished therefor as provided in the Penal Code of Texas, of 1925.

(10) All decisions and orders of the Board shall be public records. The Board shall make and submit to the Governor, on or before the 1st day of each year, a report containing a full and complete account of its transactions and proceedings for the preceding fiscal year, together with such other facts, suggestions and recommendations as it may deem of value to the people of the State.

(11) On the 1st day of July next after this Act shall take effect, and quarterly thereafter, every public utility in this State, as herein defined, except municipalities, shall file with the Treasurer of this State, a report duly verified by the affidavit of its president, secretary or general manager, of its gross receipts from its public utility business as defined in this Act for the quarter next preceding. Upon the filing of its first quarterly report, as herein provided, each public utility shall pay into the Treasury of the State a sum in cash equivalent to one-fourth ($1/4$) of one per cent of its gross receipts for

the preceding quarter, as shown by such report, and the money so paid shall be by the State Treasurer credited to and deposited in the Public Utility Board Fund. Thereafter, upon the filing of each quarterly report, each public utility shall pay into the Treasury of the State, to be credited to the Public Utility Board Fund a sum in cash of one-fourth ($1/4$) of one per cent of such gross receipts, for the preceding quarter as shown by such report, and any false statement made therein shall be punished as provided for false swearing or perjury.

(12) Any amounts due from any public utility under Sub-section 11 hereof, and not paid within ten (10) days after it becomes due, shall draw interest at the rate of ten (10) per cent per annum, and upon failure to pay the same the Attorney General shall proceed by action at law in a District Court of Travis County in the name of the State of Texas against such public utility to collect the amount due, together with interest and the cost of the suit. All assessments hereunder shall be a first lien upon all property of the public utility against which the assessment is made, prior to all other liens, debts, claims or demands whatsoever. Such lien may be enforced in an action brought in a District Court of Travis County to collect the amount due.

(13) The Board shall provide itself and its staff with adequate stationery, telephone and telegraph facilities, office supplies, travel allowances, and any other supplies, materials or services necessary to carry out the provisions of this Act, which shall be paid for on warrants signed by the Chairman of the Board, out of the Public Utilities Board Fund.

Sec. 3. General Powers of the Board. (1) The Board is vested with power and jurisdiction to supervise and regulate the utilities listed in Section 1 of this Act, and such other utilities as the Legislature shall from time to time place under its jurisdiction, and to do all things necessary and convenient in the exercise of such power and jurisdiction, but the powers here granted shall not extend to, cover or affect a municipality, nor prevent it from purchasing, building, owning or operating its own utilities; or shall it extend to, cover, or affect any of the

properties, effects, or rights of any such municipality owned or operated utilities; nor shall it extend to, cover or authorize the Board to grant any right, use or occupancy in or to any road, street, or alley in such municipality; nor shall it extend to the authorizing of the Board to grant to any utility the right to enter any municipality or render services therein without the consent of such municipality, given by the authority of the majority of legal voters of such municipality through an election authorized by the governing body of such municipality.

And providing further that it shall never be necessary for any municipal corporation to secure from the Board a certificate of public convenience and necessity for the purpose of constructing or operating any public utility plant or system.

(2) The Board shall provide for a comprehensive classification of services for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility is required to conform its schedules of rates to such classification.

(3) The Board shall have power to adopt reasonable rules and regulations relative to all inspections, tests, audits and investigations.

(4) The Board shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the Board to perform its duties.

(5) Each public utility shall furnish to the Board, in such form and at such times as the Board shall require, the following information respecting the identity of the holders of its voting capital stock, in order to enable the Board to determine whether such holders constitute an affiliated interest within the meaning of this Act: The names of each holder of one per centum or more of the voting capital stock of such public utility; the nature of the property right or other legal or equitable interest which the holder has in such stock; and any other information deemed necessary by the Board.

(6) In the event any public utility shall fail to furnish the Board with information required of it by the Board, the Board may issue an order directing the delinquent public utility to furnish such information forthwith, or to show good cause why such information cannot be obtained. Any public utility failing or refusing to comply with any such order or subpoena shall, for each day it shall so fail or refuse, be subject to a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500).

(7) The Board or any member or any person employed by the Board for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility, and to examine, under oath, any officer, agent or employee of such public utility in relation to its business and affairs. Any person other than one of said members who shall make such demand, shall produce his authority to make such inspection.

(8) The Board may require, by order or subpoena, served on any public utility as a summons is served in District Court, the production within this State at such time and place as it may designate, of any books, accounts, papers, or records kept by said public utility without the State, or the utility shall furnish verified copies in lieu thereof, as the Board shall order. Any public utility failing or refusing to comply with any such order or subpoena shall, for each day it shall so fail or refuse, be subject to a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500).

(9) The Board, its agent, experts, or examiners may enter upon premises occupied by any public utility for the purpose of making the examinations and tests provided in this Act and set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

(10) Any person who shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the Board or its agent, shall be subject to a fine not exceeding One Hundred Dollars (\$100) or imprisonment not exceeding thirty (30) days or both.

Any public utility knowingly permitting the destruction of, injury to,

or interference with any such apparatus or appliance, shall be subject to a fine not exceeding One Thousand Dollars (\$1,000) for each offense.

(11) The Board shall have and is hereby given all powers which have heretofore been delegated to the Railroad Commission of Texas, wherever such powers are in conflict with this Act.

(12) The Board may confer by correspondence or by attending conventions, or otherwise, with similar boards, commissions, or other public bodies of other States, or of the Federal Government.

Sec. 4. Valuation. (1) The Board shall, as hereinafter provided, investigate, ascertain and report the value of all the property owned or used by every utility listed in Section 1 of this Act. To enable the Board to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Board may appoint examiners who shall have power to administer oaths, examine witnesses and take testimony. The Board shall make an inventory which shall list the property of every public utility listed in Section 1 of this Act, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures prescribed by the Board in the uniform system of accounts provided for in Section 8 of this Act.

(2) Except as herein otherwise provided, the Board shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value of the property of every public utility as a whole, and separately, the value of its property in each of the several cities, towns, and counties, classified and in detail as herein required.

(3) Such investigation shall be commenced within six (6) months after the effective date of this Act, and shall be prosecuted with diligence and thoroughness, and the result thereof reported in the annual reports of the Board. Every public utility listed in Section 1 of this Act shall furnish to the Board or its

agents, from time to time and as the Board may require, maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said public utility, and shall grant to all agents of the Board free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every public utility is hereby directed and required to cooperate with and aid the Board in the work of the valuation of its property in such further particulars and to such extent as the Board may require and direct, and all rules and regulations made by the Board for the purpose of administering the provisions of this Section shall have the full force and effect of law. Unless otherwise ordered by the Board, with reasons therefor, the records and data of the Board shall be open to the inspection of the public.

(4) Upon completion of the valuation herein provided for, the Board shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and cost of the property of all public utilities and shall from time to time, revise and correct its valuations, showing such revisions and corrections classified, and as a whole, and separately in each of the several cities, towns, and counties, which valuations, both original and corrected, shall be tentative valuations and shall be reported in the annual report of the Board.

To enable the Board to make such changes and corrections in its valuations of each class of property, every public utility listed in Section 1 of this Act shall make such reports and furnish such information as the Board may require.

(5) Whenever the Board shall have completed the tentative valuation of the property of any public utility as herein directed, and before such valuation shall become final, the Board shall give notice by registered letter to the said public utility, the Attorney General of the State of Texas, the mayor of any municipality in which the property so valued is located, and to such additional parties as the Board may prescribe,

stating the valuation placed upon the several classes of property of said public utility, and shall allow thirty (30) days in which to file a protest of the same with the Board. If no protest is filed within thirty (30) days, said valuation shall become final as of the date thereof.

(6) If notice of protest is filed the Board shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the Board shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected valuation final as of the date thereof. All final valuations by the Board and the classification thereof shall be public records and shall be conclusive evidence of the value of the property in all proceedings under this Act, and the various Acts amendatory thereof, as to the date of the fixing thereof, and in all judicial proceedings brought to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Board.

(7) If upon the trial of any action involving the final determination of the utility rates, services and/or any other matter affected by such value fixed by the Board, evidence shall be introduced regarding such value which is found by the Court to be different from that offered upon the hearing before the Board, or additional thereto and substantially affecting said value, the Court, before proceeding to render judgment, shall transmit a copy of such evidence to the Board, and shall stay further proceedings in said action for such time as the Court shall determine from the date of such transmission. Upon the receipt of such evidence the Board shall consider the case and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon to said Court within the time fixed by the Court. If the Board shall alter, modify or amend

its order, such altered, modified or amended order shall take the place of the original order as though made by the Board in the first instance. If the original order shall not be rescinded or changed by the Board judgment shall be rendered upon such original order.

(8) In valuing the property of the public utilities as hereinabove provided the Board shall find and fix a value which as nearly as may be possible represents the actual legitimate prudent cost of the property used and necessary in rendering the public utility service or services. The Board shall have power to ascertain every fact which in its judgment may or does have any bearing on the determination of such cost. When the Board has so found and fixed the value of the property of any public utility subject to the provisions of this Act and any amendments thereto, such value shall be the legal value of the public utility as of that date for all the purposes contemplated in this Act.

(9) The provisions of this Section shall apply to receivers of public utilities and operating trustees. In case of failure or refusal on the part of any public utility, receiver or trustee to comply with all the requirements of this Section and in the manner prescribed by the Board such public utility, receiver or trustee shall forfeit to the State of Texas the sum of Five Hundred Dollars (\$500) for each such offense and for each and every day of the continuance of such offenses, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

(10) The District Courts of Travis County shall have jurisdiction, upon the application of the Board, alleging a failure to comply with or a violation of any of the provisions of this Section by any public utility, receiver or trustee to issue a writ or writs of mandamus commanding such public utility, receiver or trustee to comply with the provisions of this Section.

(11) Any member of the Board who shall wilfully overvalue the property of a public utility for the purpose of enabling such public utility to exact a higher rate for service than could lawfully be exacted, or shall wilfully undervalue such property for the purpose of

preventing such public utility from charging a lawful rate for such service shall be fined not to exceed One Thousand Dollars (\$1,000) or be imprisoned in the county jail, not more than two (2) years or both.

Sec. 6. Rate-making. (1) Within sixty (60) days after this Act becomes a law every public utility listed in Section 1 of this Act shall file with the Board schedules showing all rates which it has established and which are in force at the time for any service performed by it within the State, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates shown on such schedules shall not exceed the rates in force on January 1, 1935.

(2) Every public utility shall file with and as a part of such schedule of rates all rules and regulations that, in the judgment of the Board, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable, as the Board may by general or special order direct.

(3) The rates, rules and regulations described in Subsection 1 and Subsection 2 of this Section shall be prima facie the lawful rates, rules and regulations until changed, amended or superseded by others, as provided in this Act.

(4) A copy of so much of said rates, rules and regulations as the Board shall deem necessary for the use of the public shall be printed in plain type by such utility and kept on file in every station or office of such public utility where payments are made by the consumers or users, in such form and place as to be readily accessible to the public.

(5) Where a schedule of joint rates or charges is in force between public utilities, such schedules shall in like manner be printed and filed with the Board, and so much thereof as the Board shall deem necessary for the use of the public shall be filed in every such station or office as provided in Subsection 4.

(6) Whenever public utilities for the conveyance of telephone messages are furnishing joint telephone service to the public, or shall be

required to furnish such service, and shall refuse or neglect to establish joint tolls or long distance services, the Board may, after notice and a public hearing, establish, by order, such joint tolls, and if the public utilities shall fail to agree upon the apportionment thereof within twenty (20) days after the service of such order, the Board may, upon a like hearing, issue a supplemental order declaring the apportionment of such joint tolls, and the same shall take effect as a part of the original order.

(7) In exercising its power to prescribe the legal rates for the public utilities under its jurisdiction, which power is hereby specifically delegated to it, the Board shall initiate, modify, establish or adjust such rates so that each independent public utility and/or each group of affiliated public utilities (as defined under Section 1), will, under honest, efficient and economical management, earn an annual net profit equal, as near as may be, to the fair rate of return upon the lawful value (as defined in Section 4 of this Act) of the property of such public utility or affiliated group of public utilities.

(8) It is hereby declared to be the policy and purpose of this Act to provide, as far as may be, adequate protection for capital prudently invested in the public utility industry of Texas, and to provide, as far as may be, an opportunity for it to earn and receive under honest, efficient and economical management, a fair annual rate of return. The Board shall, after a public hearing as herein provided, fix and determine the fair rate of return for each category of public utilities (that is, for natural gas, artificial gas, electric, and telephone, utilities, each considered as a separate category), provided that this fair rate, as conclusively determined by the Board, and hereby declared to be the legal rate, shall not be less than four (4) per centum per annum, nor more than eight (8) per centum per annum; provided that this legal rate of return shall be considered in the nature of an average annual rate of return, and not a rate of return that should be earned in any given year; and provided that the Board, after a public hearing as hereinafter provided, may change or amend the legal rate of return for all the categories, or for any one or more of

them, within the limits specified in this Section; and provided that the Board in determining or amending the legal rate of return shall take into consideration the nature of the industry, the amount and nature of the risk involved in such a venture or business, the amount of capital seeking investment, the alternate investment opportunities, the prevailing rate of return on similar investments and other material and relevant matters; and provided further, that this does not in any way whatsoever obligate either the Board or the State of Texas concerning any deficit suffered by such public utility or affiliated group of public utilities in the matter of said legal rate of return.

(9) Upon complaint in writing, against any public utility, by any municipality, person, firm or corporation, or upon the initiative or complaint of the Board that any rate rendered, charged, demanded, exacted or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, or unjustly preferential or in violation of law, or that any regulation, measurement or practice affecting or relating to any service furnished by said public utility, or in connection therewith is, or will be, in any respect unreasonable, unjust, insufficient or unjustly discriminatory or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, the Board shall notify the public utility complained of that complaint has been made, and of the time and place when the same will be considered and determined, which notice shall be given the public utility no less than fifteen (15) days before such hearing, and shall plainly state the matters or things complained of. The Board shall, if it appears that there are reasonable grounds for the complaint, proceed to hear and determine the matters complained of. The parties thereto shall be entitled to be heard, represented by counsel and to have process to enforce the attendance of witnesses. A public utility may make complaint as to any matter affecting its own product, service, rates or business with like effect as though made by a person, firm or corporation, in which event the Board shall publish notice thereof

ten (10) days prior to such hearing in a newspaper of general circulation at the situs of such public utility.

(10) When complaint is made of more than one rate, charge, or service, the Board may order separate hearings thereon and may consider and determine the matters complained of separately and at such times and places as it may prescribe. No complaint shall necessarily be dismissed because of the absence of direct damage to the complainant.

(11) Whenever the Board shall be of the opinion, after hearing, that any rate tendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is or will be unjust, unreasonable, unjustly discriminatory or unjustly preferential or in violation of law, or the service inadequate, or that the rates chargeable by any such public utility are insufficient to yield the lawful rate of return on the lawful value of the property of the public utility, as herein delimited and defined, the Board shall, according to the facts in each case, fix and determine the just and reasonable rate to be thereafter rendered, charged, demanded, exacted or collected for the performance or rendition of the service, and order the same substituted therefor; and thereafter no change in the rate or service shall be made, rendered, charged, demanded, exacted or changed by such public utility without the order of the Board and any other rate or service shall be deemed and held to be unjust and unreasonable, prohibited and unlawful. Upon application of any person or municipality, or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in this Act for other hearings, has been given, the Board may rescind, alter or amend an order fixing any rate or service, or any other order made by the Board. Certified copies of such order shall be served and take effect in the same manner as provided for original orders.

(12) Whenever there shall be filed with the Board any schedule stating a new individual or joint rate, or any new individual or joint classification or any new individual joint regulation or practice affecting any rate, the Board shall have, and it is hereby given authority, either

upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested public utility or utilities, but upon fifteen (15) days notice, to enter upon a hearing concerning the lawfulness of such rate, classification, regulation or practice; and pending such hearing and the decision thereon the Board, upon filing with such schedule and delivering to the public utility or utilities affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, classification, regulation or practice, but not for a longer period than six months beyond the time when it was filed with the Board; and after full hearing, whether completed before or after the rate, classification, regulation or practice goes into effect, the Board may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, classification, regulation or practice shall go into effect at the end of such period; but in case of a proposed increased rate the Board may by order require the interested public utility or utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested public utility or utilities to refund, with six (6) per cent interest, per annum, to the persons in whose behalf such amounts were paid, such portion of such increased rates as by its decision shall be found not justified. If within one year after such order is served on the public utility any of such funds have not been so refunded they shall be paid by the public utility into the General Fund of the municipality where such person or persons resided during payment thereof, as the Board shall direct. At any hearing involving a rate sought to be increased after the passage of this Act the burden of proof to show that the proposed rate, fare or charge is just

and reasonable shall be upon the public utility, and the Board shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(13) Rates and service regulations may be established by contract between a municipality and a public utility for a specified term, not exceeding ten (10) years, but only by and with the approval of the Board to be expressed by its order. Public utilities may contract with each other and with persons who are not public utilities in respect of the use of their properties and facilities, the sale or exchange of gas, electricity or other utility service, products or commodities, otherwise than pursuant to established rates, the distribution to the public of such products and commodities jointly or singly, and the territory within which such joint or single service shall be rendered and other matters deemed to be of mutual advantage, subject however, in all cases, to the approval of the Board; but no person shall participate in such distribution to the public who is not a public utility or a municipality. Whenever any such contract shall be made, it shall before becoming effective, be submitted to the Board. If the Board shall find the provisions of any such contract consistent with the public interest and not unlawful, it shall approve the same, and unless and until so approved such contract shall be of no effect; but if it be approved it shall in all respects be lawful. When such a contract is submitted to the Board, the Board shall within thirty (30) days either approve it or set a date for hearing thereon. Whenever a public utility provides for itself by contract, as above provided, a source of supply of any product or commodity which it would otherwise be under the duty to generate or manufacture, it shall, to such extent, as the Board may order, be excused from the construction or maintenance of plant, facilities and equipment necessary for such generation or manufacture.

(14) The provisions of this Act, except when specifically so provided, shall not apply or be construed to apply to commerce with foreign nations or among the several States,

except in so far as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

(15) All orders of the Board made and entered upon its records shall be operative and in full force and effect from and after the time fixed for the same to become effective by the Board, unless such orders be thereafter changed, altered, modified or set aside in accordance with the provisions of this Act.

(16) Whenever the Board shall believe that any rate may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.

(17) The Board may by order, when deemed by it necessary to prevent injury to the business or interests of the people or any public utility, in case of any emergency, to be judged of by the Board, temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules or orders relating to or affecting any public utility or part of any public utility.

(18) In addition to the powers and duties of the Board in relation to gas utilities, which powers and duties are hereby transferred to the Board from the Texas Railroad Commission, except in so far as they refer to the production of natural gas, the Board shall exercise and perform the following powers and duties:

The Board after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates and regulations for transporting, distributing, buying, selling and delivering gas to, and by pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Board may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies gathering, transport-

ing and selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and gathering, receiving, transporting and distributing facilities; and regulate and apportion the supply of gas between towns, cities and corporations.

(19) The domestic consumers of natural gas shall at all times have preferential rights to all gas available, and when the available supply is insufficient to meet both the domestic and industrial requirements, the Board is hereby expressly authorized to require both pipe lines and distributing companies to discontinue service to any or all industrial customers for as long a period as in its judgment may be necessary.

(20) Where two or more pipe lines, or pipe line systems, are gathering gas from the same pool, whenever it is deemed necessary in order to prevent discrimination, the Board may require an interchange of gas and of the use of the gathering systems of such pipe line companies on such terms as may be mutually agreed upon, and in case they are unable to agree, then upon such terms and conditions as may be fixed by the Board.

(21) Nothing in this Section shall be taken to prohibit a public utility, with the consent of the Board, from providing a scale of rates according to what is commonly known as the Hopkinson rate system, or a promotional rate scale, or other financial device that may be practicable and advantageous and in the public interest. No such arrangement or device shall be lawful until it shall be found by the Board, after investigation, to be reasonable and just and not inconsistent with the purposes of this Section. Such arrangement shall be under the supervisions and regulations of the Board. The Board shall ascertain, determine and order such rates and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates and regulations as the Board may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved

and vested in the Board notwithstanding any such arrangement and mutual agreement.

(22) Any two or more public utilities, as defined in Section 1 of this Act, which are engaged in any public utility business in any city or town of this State, may merge or consolidate their facilities within such city or town, or any such public utility may lease, sell or otherwise dispose of its plant or business or any part thereof to any other public utility doing or authorized to do a like business within said city or town, by securing the approval of said consolidation, merger, sale, lease or other disposition by the Board of Public Utility Commissioners and the governing body of the city or town in which the properties concerned are located; provided however, that where a public utility is municipally owned the municipality shall not sell and dispose of its property in said utility until the approval of a majority of the qualified voters of such city or town voting in an election held for that purpose has been obtained.

Sec. 6. Discrimination. (1) If a public utility or any agent or officer thereof, by special rate, rebate, drawback or by means of false billing, false classification, false weighing or any other device whatsoever, shall knowingly charge, demand, collect or receive, either directly or indirectly, from any person, firm or corporation, a greater or less compensation for service rendered or to be rendered by it than that prescribed in the published rate schedules then in force, or established as provided herein; or a greater or less compensation than it charges, demands, collects or receives from any other person, firm, or corporation for a like and contemporaneous service, it shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful, and upon conviction thereof shall forfeit and pay into the State Treasury not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each offense.

(2) Whoever, being an agent or officer of a public utility, violates any provision of the next preceding Section shall be fined not less than Fifty Dollars (\$50) nor more than

One Thousand Dollars (\$1,000) for each offense.

(3) No public utility shall demand, charge, collect or receive from a person, firm or corporation a less compensation for a service rendered or to be rendered by it in consideration of such person, firm or corporation furnishing a part of the facilities incident thereto; but nothing herein shall prohibit a public utility from procuring facilities or service incident to its operation and paying a reasonable compensation therefor.

(4) No public utility shall make or give undue or unreasonable preference or advantage to a particular person, company, firm, corporation or locality, or to any particular description of service, in any respect whatsoever, or subject any particular person, company, firm, corporation or locality, or any particular description or service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Provided all utilities shall sell their products or services to public schools at the lowest rate that they sell to any other customer in that school district.

(5) If a public utility does, causes or permits to be done any matter, act or thing prohibited in this Section or declared to be unlawful or omits to do an act, matter or thing required to be done by this Section, such public utility shall be liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of such violation. A recovery by any person of the damages provided by this Section shall not affect a recovery by the State of the penalty prescribed for such violation.

Sec. 7. Service. (1) Every public utility shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(2) The Board may require and compel telephone corporations to establish public telephone stations along existing lines, wherever the same may be reasonably necessary and convenient, for the purpose of receiving and delivering messages and conversation, to be transmitted by telephone and may require and compel telephone corporations to

deliver promptly all messages to be sent or transmitted by them.

(3) If any public utility shall unreasonably or arbitrarily fail or refuse to furnish adequate service to any person within the territorial limits within which such public utility has, by its charter, authority to furnish such service, such person may bring his written petition to the Board alleging such failure or refusal. Thereupon the Board shall fix a time and place for a hearing upon such petition, and shall mail notice thereof to the parties in interest at least fifteen (15) days prior to such hearing. Upon said hearing the Board may, if it finds that such public utility has unreasonably or arbitrarily failed or refused to furnish such person with adequate service, prescribe the service to be furnished by such public utility to such person and the conditions under which, and rates at which such service shall be furnished. Such public utility shall thereafter furnish such service to such person in accordance with the conditions so prescribed.

(4) A public utility shall not refuse to supply its services for any building or premises to a person applying therefor who is not in arrears to it for any such services previously supplied to him because a bill for such services remains unpaid by a previous occupant of such building or premises.

(5) Whenever the Board, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipe, or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensations for the same, the Board may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the

joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

(6) The Board shall fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulation for examination and testing of such product or service and for the measurement thereof.

(7) Whenever the Board shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find that any service is inadequate or that any service which can be reasonably demanded cannot be obtained, the Board shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise unlawful, and shall make such other order respecting such measurement, regulation, act, practice or service as it shall deem necessary.

(8) Whenever the Board, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Board shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the Board orders the erection of a new structure, it shall also fix the site thereof. Provided however, that

no complaint that a municipally owned plant is unable to furnish service shall warrant the granting of a permit for any utility to enter such municipality.

If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the Board has ordered to be erected, require joint action by two or more public utilities, the Board shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the Board may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Board a statement that an agreement has been made for division or apportionment of the cost of expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Board may, after further hearing, make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

(9) Upon petition of any person and the payment by such person of a fee of One Dollar (\$1) for each meter, the Board shall cause to be inspected any electric or gas meter used in measuring electricity or gas supplied to such petitioner. The public utility supplying electricity or gas through such meter shall reimburse the petitioner for said fee if such meter be found to be more than two (2) per cent fast, in the case of a gas meter, or four (4) per cent fast, in the case of an electric meter, and shall not again use such meter, until corrected and approved by the Board. The Board shall cause to be approved any electric or gas meter in which the error does not exceed two (3) per cent for gas meters or four (4) per cent for electric meters, and shall cause the same to be stamped with some suitable device and the date of approval.

Sec. 8. Accounting. (1) The Board

shall establish a system of accounts to be kept by public utilities or classify said public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It shall prescribe the manner in which the forms of accounts, records, and memoranda are to be kept, including the receipts and expenditures of money, and any other records necessary to carry out any of the provisions of this Act. The same shall not be inconsistent, in the case of public utilities subject to the regulations of the Interstate Commerce Commission or of any other Federal Commission, with the systems and forms established for such public utilities by said commission or commissions, but the Board may prescribe forms of accounts, records and memoranda covering information in addition to that required by the Federal agencies. The Board may prescribe the accounts in which particular outlays and receipts shall be entered, charged or credited. It shall be unlawful for any such public utility to keep any accounts, records or memoranda other than those prescribed by the Board, or those prescribed by or under the authority of any other State or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed, as sanctioned by the Board.

(2) The Board may, after hearing, require public utilities to carry a proper and adequate depreciation account in accordance with such regulations and forms of account as it may prescribe. It may ascertain and fix the proper and adequate rates of depreciation for each of the several classes of property, and each public utility shall conform its depreciation accounts to the rates so ascertained and fixed, and shall set aside the money so provided for out of earnings and carry the same in a depreciation account and expend such account, and the income therefrom, only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the Board may prescribe.

(3) The Board, any member, or any person employed by the Board for that purpose, may, at any and all times, inspect the accounts, books,

papers and documents of any public utility, and any of said persons who are herein authorized to administer oaths may examine under oath any officer, agent or employee of such public utility in relation to the business and affairs of said public utility. Any person other than a member of the Board or any officer of the Board demanding such inspection shall produce under the hand and seal of Board his authority to make such inspection. A written record of the testimony or statement so given under oath shall be made and filed with the Board.

(4) The Board may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this State, at such time and place as it may designate, of any books, accounts, papers or records kept in any office or place without this State, or the utility, at its option may furnish verified copies in lieu thereof, so that an examination thereof may be made by the Board or under its direction.

(5) Every public utility engaged directly or indirectly in any other business than those mentioned in Section 1 of this Act, shall, if required by the Board, keep and render separately to the Board, in like manner and form, the accounts of all such other business, in which case all the provisions of this Act shall apply with like force and effect to the books, accounts, papers and records of such other business.

(6) The Board shall keep informed of all new construction, extensions and additions to the property of all public utilities under its jurisdiction, and may prescribe the necessary forms, regulations and instructions to the officers and employees of such public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction.

(7) The Board shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the Board. Each public utility having an annual gross income of Ten Thousand Dollars (\$10,000) or more shall annually file with the Board a true balance sheet and income account of its financial affairs. If the accounts of any public

utility are kept by districts, such utility shall file a report separately for each district, and shall, in addition to the balance sheet and income account for the entire corporation, include a condensed income and operating statement for that district.

Sec. 9. Reports. (1) Each public utility shall furnish to the Board, in such form and at such times as the Board shall require, such accounts, reports and information as shall show in itemized detail and separately per unit: The depreciation; the salaries and wages; legal expenses; taxes and rentals; the quantity and value of material used; the receipts from residuals, by-products, services or other sales; the total and net cost; the gross and net profit; the dividends and interest; surplus or reserve; the prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the Board may prescribe in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public.

(2) No municipality operating its own utility or utilities shall be required to report under this Section except as to earnings, operating expenses, including depreciation and maintenance, cost of renewals, extensions and improvements to the property and the nature and amount of service furnished in such detail as the Board shall deem necessary, provided that in case of any investigation by the Board upon formal complaint, the Board may require more detailed reports as to units provided for in this Subsection.

(3) Annually, on or before the last day of January, the Board shall file in the office of the Governor a report containing an accurate review of the work of the Board in the administration of this Act for the preceding fiscal year; and a schedule of all applications for permits to sell securities, of the permits granted, of the applications rejected, and of permits canceled or revoked; and a statement of the receipts and disbursements of the Board, and such other material information as relates to its administration of said Act.

(4) The Board shall publish in its annual reports the value of all the property actually used and necessary for the convenience of the public of

every public utility as to whose rates, charges, services or regulations any hearing has been held by the Board, or the value of whose property has been ascertained by it.

(5) All facts and information in the possession of the Board shall be public, and all reports, records, files, books, accounts, papers and memoranda of every nature whatsoever in its possession shall be open to inspection by the public at all reasonable times, except that whenever the Board shall determine it to be necessary in the interest of the public to withhold from the public any facts or information in its possession, such facts may be withheld for such period, not exceeding ninety (90) days as the Board may determine.

Sec. 10. Franchises. (1) Nothing herein shall be so construed as superseding, modifying or annulling the provisions of any franchise heretofore granted by a municipality or the right of such municipality to purchase the plant, properties and facilities, or terminate the franchise of such grantee. And while such franchises are in force, the rights and liabilities of such municipality, and its inhabitants, and of such public utility, respectively, shall be determined by the provisions of such franchise, and except where in conflict with the express provisions hereof, the Board shall be governed thereby in the exercise of the jurisdiction herein conferred with respect to such public utilities.

(2) Every franchise hereafter granted to any public utility shall have the effect of a terminable permit, as defined in the foregoing Subsection 1.

(3) Any public utility operating in a municipality under a terminable permit shall be deemed to have consented to the purchase of its property operated in such municipality under such permit, by that municipality for a legal compensation.

(4) If, for any reason, other than for misuser or nonuser, or through purchase of the property operated thereunder, any terminable permit held by a public utility is held to be invalid, the public utility shall by operation of law, and without further act, have reinstated in it the franchise or franchises surrendered by it in exchange for such terminable permit. If such franchise, or any part thereof, has expired by limitation of

term, it shall, nevertheless, by operation of law, be extended for a period of three (3) years from and after the date when such terminable permit is held to be invalid. If the public utility involved has taken such terminable permit as a new franchise, and not in connection with the surrender of an old franchise, or franchises, it shall, by operation of law, have the right to carry on its operations as embraced in such terminable permit, for a period of three (3) years from the date when such terminable permit is declared invalid.

(5) No person or corporation hereafter shall begin the construction or operation of any public utility, plant or system, or any extensions thereof in or into any municipality or territory in which it has not theretofore rendered such utility service, until it shall have secured from the Board a certificate of public convenience and necessity, as well as the consent in writing of the governing body of such municipality authorized by a majority vote of the legal voters of such municipality. The application for an issuance of any such certificate shall be under such rules and regulations as to hearing and other matters as the Board may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Board shall cause notice thereof to be given to, and a copy filed with, the chief administrative officer of each municipality in which such additional public utility plant or system is proposed to be constructed or operated, with the right to be heard as herein provided with respect to the hearing of complaints or the issuance of securities; and such notice shall also be published for three (3) consecutive weeks in some newspaper of general circulation in each municipality in which said public utility plant or system is to be constructed or operated. The Board shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for any process or processes of the public utility plant or system described in the application, or for the partial issuance of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and

after issuance of such certificate and not before, the public utility may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate, and proceed with the construction or operation covered thereby. Any construction or operation contrary to the provisions of this paragraph may be enjoined by the District Courts of Travis County, Texas, at the suit of the Board, or any other party in interest; and any public utility, or any director, officer, receiver, operating trustee, lessee, agent, or other person acting for or employed by such public utility, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph, upon conviction thereof shall be punished by fine of not less than One Thousand Dollars (\$1,000) or be imprisoned in the county jail for not more than one year, or both.

Sec. 11. (1) From and after this Act takes effect it shall be unlawful for any public utility to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of any public utility (hereinafter in this Section collectively termed "securities"), or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the public utility corporation, unless and until, and then only to the extent that, upon application by the public utility and after investigation by the Board of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Board by order authorizes such issue or assumption. The Board shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the public utility of utility service to the public, and which will not impair its ability to perform that service, and (b) is

reasonably necessary and appropriate for such purpose.

(2) The Board shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modification and upon such terms and conditions as the Board may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirement of the foregoing paragraph.

(3) Every application for authority shall be made in such form and contain such matters as the Board may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the public utility by its president, a vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the public authority or utility.

(4) All applications for the issuance of securities or assumption of liabilities or obligations shall be placed at the head of the Board's docket and be disposed of promptly, and all such applications shall be disposed of in sixty (60) days after the same are filed with the Board, unless it is necessary for good cause to continue the same for a longer period. Whenever such application is continued beyond sixty (60) days after the time it is filed, the order making such continuance must state fully the facts which necessitate such continuance.

(5) Whenever securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the utility shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the public utility, such public utility shall within ten (10) days after

such sale, pledge, repledge, or other disposition, file with the Board a certificate of notification to the effect, setting forth therein all such facts as may be required by the Board.

(6) The jurisdiction conferred upon the Board by this Section shall be exclusive and plenary, and a public utility may issue securities and assume obligations or liabilities in accordance with the provisions of this Section without securing approval other than as specified herein.

(7) Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the State of Texas.

(8) The foregoing provisions of this Section shall not apply to notes to be issued by the public utility maturing not more than two (2) years after the date thereof and aggregating (together with all other outstanding notes of a maturity of two [2] years or less) not more than five (5) per centum of the legal value of the property of the public utility as determined under Section 4 of this Act. Within ten (10) days after the making of such notes the public utility issuing the same shall file with the Board a certificate of notification, in such form as may from time to time be determined and prescribed by the Board, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities; provided, that in any subsequent funding of such notes the provisions of this Section respecting other securities shall apply.

(9) Nothing contained in this Act shall limit the power of any Court having jurisdiction to authorize or cause receivers certificates or debentures to be issued according to the rules and practices obtaining in receivership proceedings in Courts of equity.

(10) The Board shall require periodical or special reports from each public utility hereafter issuing any securities, including notes, which will show, in such detail as the Board may require the disposition made of such securities and the application of the proceeds thereof.

(11) Any security issued or any obligation or liability assumed by a public utility, for which under the provisions of this Section the authorization of the Board is required, shall

be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this Section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, any person may in a suit or action in any Court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the public utility which issued the security so made void, and its directors, officers, attorneys, and other agents who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void, or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the public utility issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the utility who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this Section, or any sale or other disposition of securities contrary to the provisions of the Board's order or orders in the premises, or any application not authorized by the Board of the funds derived by the public utility through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Thousand Dollars (\$1,000) nor more than Ten Thousand Dollars (\$10,000).

Sec. 12. Intercompany Relations.

(1) Within the meaning of this Section, every foreign corporation

shall be deemed to be doing business within the State if, directly or indirectly, through agents, trustees or any other means, it furnishes to any affiliated public utility for use in intrastate operations in this State, any or all of the following (a) any managerial, supervisory, engineering, legal, accounting or financial service; (b) any equipment, facilities or commodities, by sale, lease, exchange, conveyance, license or similar arrangement.

(2) Within the meaning of this Section the term "affiliated" shall have the same meaning as the term "affiliated interests" as defined in Section 1 of this Act; provided however, that the mere ownership of stock and receipt of dividends thereon shall not constitute doing business. This Section shall not have the effect of imposing upon the corporations described in said Section a duty to pay fees. The provisions of this Section shall apply to interstate commerce only so far as the Constitution and laws of the United States permit.

(3) No contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing, or for the furnishing of any service, property, right or thing, other than those above enumerated, hereafter made or entered into between a public utility and any holding company, or affiliated interest as defined in this Section, shall be valid or effective unless and until such contract or arrangement shall have received the written approval of the Board. It shall be the duty of every public utility to file with the Board a verified copy of any such contract or arrangement, or a verified summary of any unwritten contract or arrangement, and also of all such contracts and arrangements, whether written or unwritten, entered into prior to the effective date of this Act and in force and effect at that time. The Board shall approve such contract or arrangement hereafter made or entered into only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest;

otherwise the contract or arrangement shall not be approved.

No such contract or arrangement shall receive the Board's approval unless satisfactory proof is submitted to the Board of the cost to the holding company or affiliated interest of rendering the services or of furnishing the property or service described herein to such public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the holding company or affiliated interest, or such abstract thereof or summary taken therefrom as the Board may deem adequate, properly identified and duly authenticated; provided however, that the Board may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(4) In any proceeding, whether upon the Board's own motion or upon complaint, involving the rates or practices of any public utility, the Board may exclude from the accounts of such public utility any payment or compensation to a holding company or to an affiliated interest for any services rendered or property or service furnished, as above described under existing contracts or arrangements with such holding company or affiliated interest unless such public utility shall establish the reasonableness of such payment or compensation. In such proceeding the Board shall disallow such payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such proceeding no payment or compensation shall be approved or allowed by the Board, in whole or in part, unless satisfactory proof is submitted to the Board of the cost of the holding company or affiliated interest of rendering the service or furnishing the property or service above described to such public utility. No proof shall be satisfactory, within the meaning of the foregoing sentence, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the holding company or affiliated interest, or such abstract thereof or summary taken

therefrom as the Board may deem adequate, properly identified and duly authenticated; provided however, that the Board may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(5) The Board shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The Board shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that the Board shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable. Every order of the Board approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the Board to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest.

(6) Whenever the Board shall find upon investigation that any public utility is giving effect to any such contract or arrangement without such contract or arrangement having received the Board's approval as required by this Section, the Board shall issue a summary order directing the public utility to cease and desist from making any payments or otherwise giving any effect to the terms of such contract or arrangement, until such contract or arrangement shall have received the approval of the Board. Any District Court of Travis County is authorized to enforce such order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the Board.

(7) Whenever the Board shall find upon investigation that any public utility is making payments to a holding company or an affiliated interest, although such payments have been disallowed and disapproved by

the Board in a proceeding involving the public utility's rates or practices, the Board shall issue a summary order directing the public utility to cease and desist from making any payments or otherwise giving any effect to the terms of such contract or arrangement, until such contract or arrangement shall have received the approval of the Board. Any District Court of Travis County is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the Board.

(8) Reorganization of public utilities shall be subject to the supervision and control of the Board, and no such reorganization shall be had or given effect without the written approval of the Board. No plan of reorganization shall be approved by the Board unless it shall be established by the applicant for approval that the plan of reorganization is consistent with the public interest.

(9) No electric public utility corporation shall hereafter purchase the franchise or property of, or consolidate with a gas public utility corporation, either directly or indirectly, and no gas public utility corporation shall purchase the franchise or property of, or consolidate with an electric public utility corporation, either directly or indirectly through an affiliated interest or holding company, or otherwise; provided, that a gas public utility corporation heretofore authorized to engage in the business of generating and/or furnishing electricity for light and power uses may, with the approval of the Board, sell its locations and the property used in its business of generating and/or furnishing electricity for light and power uses to an electric public utility corporation whose lines are in the same or in a contiguous municipality, or may make such sale to the municipality if such be desired.

(10) The Board shall have, in respect of holding companies and affiliated interests, all the authority and power to make investigations, inspections and examination, to employ experts to assist it in doing so, to subpoena witnesses, administer oaths and take testimony and to issue orders and decrees as are herein conferred upon it by law with respect to the affairs, management,

operations, rates, services and practices of public utilities.

Sec. 13. Board Procedure. (1) The Board may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Board may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any member of the Board, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the Courts of the State of Texas. Any party may appear before the Board or any member thereof and be heard in person or by attorney. Every vote and official act of the Board or of any member thereof shall be entered of record, and its proceedings shall be public upon the request of any party interested.

(2) After a decision, order or requirement has been made by the Board in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Board in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Board may establish. No such application shall excuse any public utility from complying with or obeying any decision, order, or requirement of the Board, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Board. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Board may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Board may reserve, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

(3) Nothing contained in this Ar-

ticle shall be so construed as to prevent the Board from establishing any other rules of procedure or practice authorized by this Act.

(4) Each witness who shall appear before the Board or its agent by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the District Courts of this State, which shall be audited and paid by the State in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the Board. Said fees and mileage shall be charged to the Public Utility Board Fund.

The Board or any party may in any investigation or hearing cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in District Courts. Any expenses incurred or authorized by the Board in taking such depositions shall be charged to the Public Utility Board Fund.

Sec. 14. Enforcement Procedure: Penalties. (1) It is hereby declared that the legislative powers of the State of Texas, in so far as they are involved in the issuance of orders and decisions by the Board, have not been completely exercised until the Board has acted upon an application protesting the order and requesting an opportunity to present oral and/or written arguments thereon, as provided for by this Act and by the rules of the Board or until such application has been denied by the Board.

(2) The application referred to in Subsection 1 of this Section shall set forth specifically the ground or grounds on which the applicant considers said order or orders to be unlawful or unreasonable. No cause of action arising out of any order, decision or determination of the Board shall accrue in any Court to any person or corporation unless such person or corporation shall have made, within the time specified herein, such an application. No person or corporation shall in any Court urge or rely on any ground not so set forth in said application.

(3) Every order made by the Board, unless otherwise provided in this Act or by the Board in such order, shall become effective thirty

(30) days after it has been signed by the members of the Board, or a majority thereof, and a true copy has been deposited by registered letter in the United States mail addressed to the parties to said cause or their attorneys of record.

(4) Any party to said cause may, at any time after the cause is heard by the Board up to ten (10) days before the effective date of said order, file with the Board a written request for oral or written argument. Immediately upon receipt of such request the Board shall set a date and place for such argument and shall furnish to all parties to said cause a copy of the written request and order setting for hearing said argument. Mailing copy of such written request and order setting a date for said argument shall constitute notice of said hearing. However, in no event shall said hearing be had after the effective date of said order but the Board may, when necessary, change the effective date of said order. Upon said hearing any party to said cause may present to the Board any new testimony not presented upon the original trial of said cause before the Board, provided, in the opinion of the Board the party desiring to offer such new testimony had used due diligence in an effort to secure such new testimony before the original hearing, and the Board's determination as to the previous availability of said evidence and the diligence used by the party desiring to offer same shall not be subject to review by any Court except when said determination, in the opinion of said Court, is so arbitrary as to amount to an abuse of discretion.

(5) Until thirty (30) days after the date set by the Board for an order to become effective, any party to the cause may apply to any District Court of Travis County, Texas, for a writ of injunction and certiorari or review for the purpose of having the legality of the order of the Board inquired into and determined. The Court shall thereupon issue such writ directing the Board to certify its record in the case to the Court, and directing the appellant to prepare a brief in a conformity with Section 2 above. Four (4) copies of appellant's brief shall be filed with the Clerk of the Court, one other copy shall be filed with the Board, and

one copy shall be sent to any party to the cause. The Board, and any other such party, shall be permitted a reasonable time after receiving appellant's brief to prepare and file with the Clerk of the Court a counter brief, upon request for permission to do so.

If the appellant being a public utility pray for a writ staying the application of an order or orders of the Board involving any matter which directly or indirectly amounts to reduction in rates by such public utility, or which tends to restrain the public utility from any act or thing which amounts to an increase in rates, such public utility shall file with the Clerk of the Court, at the time of such application for the writ, a bond payable in Travis County, Texas, in sufficient amount, as determined by the Board with the approval of the Court, to reasonably cover the sum of any rates charged by the public utility in excess of those specified by the Board in the contested order or orders, for a time to be determined by the Board and the Court. This bond shall be made payable to the Board for the benefit of the consumers involved, and the amount thereof shall be increased at any time, or from time to time, and the sureties changed or increased at the request of the Board, if reasonably necessary to provide a continuing protection for such consumers.

In case such stay of execution, as above described, is granted, the Board shall, by order, require the public utility to keep accurate account in detail of all amounts received in excess of those specified in order or orders of the Board which are covered by the appeal. The accounts shall show by whom, or in whose behalf such payments are made; and if the final judgment of the Court shall sustain the Board's order or orders on appeal then the public utility shall be required to refund such amounts to the Board, representing such rates or portion of rates found to be excessive or unlawful, with six (6) per cent interest per annum thereon or failing to do so, the Board shall direct the Attorney General to bring suit on said bond in Travis County, Texas, and when the amount recovered on said bond is received the Board shall immediately pay over such funds to

the governing body of the municipality where the excess payments were made, and the municipality shall, if possible, refund such excess charges to the consumers who paid them. If, within one year after the final judgment of the Court thereon, any of such funds have not been refunded they shall be put into the General Fund of the Municipality.

In case appellant shall not file a bond as provided herein then the order or orders of the Board covered by the appeal shall be in full force and effect, unless and until such bond is thereafter filed.

If, upon hearing on the appeal, the Court shall uphold the order or orders of the Board, the appellant public utility shall pay all reasonable Court costs as ordered by the Court. But such Court costs, and all other costs suffered by the appellant public utility of any nature whatsoever specifically assignable to the action or actions on such appeal, shall not be charged by appellant public utility to operating expenses. If the Court shall overthrow such order or orders of the Board on appeal, then such reasonable Court costs as the Court shall order shall be paid by the State Treasurer out of the Public Utility Board Fund; and the appellant public utility shall be entitled to charge to operating expenses the reasonable costs incurred by reason of the appeal.

(6) Upon a hearing on appeal from an order or orders of the Board the Court shall enter judgment either affirming or setting aside the order or orders of the Board. The provisions of the Statutes of this State relating to appeals shall, so far as applicable and not in conflict with the provisions of this Act, apply to proceedings instituted in the Court under the provisions of this Section. No Court of this State except the District Courts of Travis County, Texas, to the extent herein specified, shall have original jurisdiction to review, affirm, reverse or annul any order of the Board, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere in any way with the Board in the performance of its official duties; provided, that the writs of mandamus or injunction shall lie from the Supreme Court to the Board in all proper cases.

(7) In any proceeding wherein

the validity of any order or decision is challenged on the ground that it violates any right of appellant under the Constitution of the United States or of this State, the Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the Board material to the determination of the said Constitutional question shall not be final.

(8) If any public utility fails or neglects to obey any order of the Board, while the same is in effect, the Board, or any party injured by such failure or neglect, may apply to a District Court in Travis County for the enforcement of such order. If, after hearing, the Court determines that the order was regularly made and duly served, and that the public utility is in disobedience of the same, the Court shall enforce the obedience to the order by a writ of injunction or other proper process, mandatory or otherwise to restrain such public utility, its officers, agents, employees or representatives from further disobedience of such order, or to enjoin upon it and/or them obedience to the same.

(9) No public utility nor any officer, agent or employees thereof; shall be liable for any penalty or forfeiture, or be subject to any prosecution on account of demanding, collecting or receiving any rate, for any service or product rendered or furnished by it, or for enforcing any rule, regulation or practice, when such rate, rule, regulation or practice is contained in the rate, and other schedules properly filed with the Board, and posted or published as herein provided, and is applicable by the terms thereof at the time to the said service or product rendered or furnished, although such rate may be found by the Board to be unjust, unreasonable, unjustly discriminatory or unduly preferential.

(10) If any individual who shall be subpoenaed to attend before the Board, or a member or proper employee of the Board shall fail to obey the command of such subpoena, or if any individual in attendance before the Board or a member or proper employee of the Board shall refuse to be sworn or to be examined, or to answer any relevant question, or to produce any relevant book, paper, or document, when ordered so to do by the Board, or a member or proper

employee of the Board, the Board may invoke the aid of any District Court of the State of Texas to enforce such attendance and testimony of witnesses, and the production of books, papers, and documents; and such Court, on due cause shown, shall issue an order requiring any person to appear before said Board, or member or proper employee of the Board, and produce books, papers and other documents if so ordered, and give testimony touching the matter in question; and any failure to obey such order of the Court may be punished by said Court as a contempt thereof, in the same manner as in the case of disobedience of the requirements of a subpoena issued from such Court, or a refusal to testify or produce evidence therein.

(11) If such person be an officer, director or employee of a public utility which is a party to the proceeding before the Board, or if any person being an officer, director or employee of such public utility, shall absent himself from the jurisdiction of the State or conceal himself for the purpose of avoiding service of a subpoena; or shall remove relevant books, papers or other documents out of this State for the purpose of preventing their examination by the Board; or shall destroy or conceal any such books, papers, or other documents for such purpose, he shall be adjudged guilty of contempt; and the said District Court may impose a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each day during the continuance of such refusal, neglect, concealment or removal; and if the said Court shall find that the neglect, refusal or concealment, or the removal or destruction of books, papers or other documents by such witness, has been occasioned by the advice or consent of such public utility, or in anywise aided or abetted by it, then, in default of payment of said fine by the person in contempt, the same shall be paid by said public utility, and may be recovered from it by an action, in the name of the State, in the said Court, as other like fines and penalties are now by law recoverable. Imprisonment for contempt shall be by commitment to the county jail of the county in which such hearing is had.

(12) Any person, whether an officer, agent or employee of any public

utility or not, who shall knowingly fail, omit, neglect or refuse to obey, observe, and comply with any final order, direction or requirement of the Board, or with any final order or decree of the Court affirming an order, direction or requirement of the Board shall be guilty of a misdemeanor, and upon conviction thereof in any Court of competent jurisdiction shall be punished by a fine of not more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than one month, nor more than twelve (12) months, either or both, at the discretion of the Court; and upon conviction of any subsequent offense shall be punished by a fine of not more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than one month, nor more than twelve (12) months, either or both, at the discretion of the Court; and upon conviction of any subsequent offense, shall be punished by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than eighteen (18) months, either or both, at the discretion of the Court.

(13) Any president, secretary, treasurer or other officer of any public utility, who shall knowingly affix his name or attestation to any written contract or arrangement, or any director who shall knowingly assent to the entering into of any written or unwritten contract arrangement, in violation of any of the provisions or requirements of this Act; or any officer or director knowingly making or assenting to any false statement in any application for the approval of any contract or arrangement, the approval of which is required by this Act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine not exceeding Five Thousand Dollars (\$5,000), or undergo an imprisonment for a term not exceeding five (5) years in the State Penitentiary, either or both, in the discretion of the Court.

(14) If any public utility shall violate any of the provisions of this Act, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect or refuse to obey, observe, and comply with any final direction, requirement, determination or order

made by the Board, for which there is no specific penalty provided elsewhere in this Act, such public utility, for such violation, omission, failure, neglect or refusal shall forfeit and pay to the State of Texas the sum of One Hundred Dollars (\$100), to be recovered by an action instituted by the Attorney General in the name of the State of Texas, in a District Court of Travis County, which Court is hereby clothed with exclusive jurisdiction to hear and determine all such actions.

In construing and enforcing the provisions of this Section the violation, omission, failure, neglect, or refusal of any officer, agent, or other person acting for or employed by any such public utility, acting within the scope of his employment, shall in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility.

(15) Each and every day's continuance in the violation of such final direction, requirement, determination, or order of the Board, or of any final judgment, order, or Court decree, shall be a separate and distinct offense; provided however, that if any injunction or preliminary injunction be granted under the provisions of this Article, no penalties shall be incurred or collected for or on account of any act, matter, or thing done in violation of such final direction, requirement, determination, order, or decree, so enjoined, for the period of time such order or injunction is in force.

(16) Any person who wilfully makes any false entry in the accounts or records prescribed by the Board for any public utility, or who wilfully destroys, mutilates, or by any other means wilfully falsifies such accounts or records, or wilfully neglects or fails to make full, true or correct entries of all facts and transactions in such accounts or records shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000), or be imprisoned in the penitentiary for a term not exceeding five (5) years, or shall suffer both such fine and imprisonment.

(17) If any public utility shall do or cause to be done any act, matter, or thing prohibited or declared to be unlawful by this Act, or shall refuse, neglect, or omit to do any act, matter, or thing enjoined or re-

quired to be done by this Act, such public utility shall be liable to the person or corporation injured thereby in the full amount of damages sustained in consequence thereof; provided, that the liability of public utilities for negligence, as heretofore established by Statute or by common law, shall not be held or construed to be altered or repealed by any of the provisions of this Act; and provided further, that the recovery authorized in this Section shall in no manner affect a recovery by the State of the penalty prescribed for the aforesaid violation of this Act.

(18). All fines imposed and all penalties recovered under the provisions of this Act shall be paid into the State Treasury.

(19). No action for the recovery of any penalties or forfeitures incurred under the provisions of this Act, and no prosecutions on account of any matter or thing concerned in this Act, shall be maintained unless brought within three (3) years from the date at which the liability therefor arose.

(20). All suits, remedies, prosecutions, penalties, and forfeitures provided for or accruing under this Act shall be cumulative.

(21). Actions to recover penalties under this Act shall be brought in the name of the State of Texas in a District Court of Travis County, Texas, except as herein otherwise provided. Whenever any public utility or any officer or employee thereof is subject to a penalty under this Act, the Board shall certify the facts to the Attorney General of Texas, who shall institute and prosecute an action for the recovery of such penalty, provided the Board may compromise such action and dismiss the same on such terms as the Court will approve. All penalties recovered by the State in such actions shall be paid into the State Treasury to the credit of the General Fund.

Sec. 15. Compulsory Testimony. No person shall be excused from attending and testifying or from producing books, papers, rate schedules, contracts, agreements and documents before the Board or in obedience to the subpoena or subpoena duces tecum be signed or issued by one or more of the members of the Board, or by any employee of the Board having power to issue such subpoena

or subpoena duces tecum, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendment thereof, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Board, or in obedience to its subpoena or subpoena duces tecum of any one of them, or of any employee having power to issue such subpoena or subpoena duces tecum, or in any such case or proceedings; provided, that no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. Immunity shall extend only to a natural person who, in obedience to a subpoena or subpoena duces tecum, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Sec. 16. Miscellaneous. (1) If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(2) This Act may be cited as the Texas Public Utilities Act.

(3) All laws and parts of laws in conflict with this Act are hereby expressly repealed.

Sec. 17. The fact that existing laws do not adequately provide for the regulation of public utilities, and that relief in that field is sorely needed, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and that this bill take effect and be in force from and after its passage, and it is so enacted.

Read and pending.

H. C. R. No. 131.

Senator Pace received unanimous consent to suspend the regular order and take up H. C. R. No. 131.

The Chair laid before the Senate H. C. R. No. 131:

By Mr. Broyles, et al.

Suspending Joint Rule No. 23 of the House and Senate in order that House Bills Nos. 193 and 198 may be taken up out of order and considered.

Senator Pace asked unanimous consent that the Senate rule requiring resolutions to be referred to a committee be suspended, and that H. C. R. No. 131 be taken up and considered at this time.

Unanimous consent was granted.

H. C. R. No. 131 was adopted by viva voce vote.

House Bill No. 65.

Senator Van Zandt sent up the following substitute amendment for the pending amendment by Senator Woodruff.

Amend H. B. No. 65 by striking out all below the enacting clause and substituting in lieu thereof the following:

"Article I. Definitions.

(a) The term "corporation," when used in this Act, includes a private corporation, an association, a joint stock company and a municipality, except where it is the sole or exclusive means or agency through which the service of a utility, as that term is hereinafter defined, is supplied to itself or its inhabitants.

(b) The term "person," when used in this Act, includes a natural person, a partnership of two or more persons having a bond or common interest, and a corporation as hereinafter defined.

(c) The term "municipality," when used in this Act, includes a city (a city and county), a county, a village, a town and any other public corporation existing, created or organized as a governmental unit under the Constitution or laws of the State.

(d) The term "public utility," when used in this Act, includes persons and corporations, or their lessees, trustees and receivers now

or hereafter owning or operating in this State equipment or facilities for:

(1) Generating, transmitting, delivering, or furnishing electric energy for the production of light, heat or power to or for the public for compensation.

(2) Transporting or conveying gas by pipe line for the purpose of sale to the public or for the purpose of selling or supplying the same to any public utility.

(3) Conveying or transmitting messages or communications by telephone, where such service is offered to the public for compensation.

(4) The term "public utility" shall for rate-making purposes only include any person transporting, conveying, generating or furnishing any of the foregoing commodities or services to another person for distribution to or for the public for compensation.

(5) The term "public utility" shall not include any person not otherwise a public utility who furnishes the services or commodity only to himself, his employees or tenants when such person is not engaged in reselling such service to such employees or tenants for profit, or when such service or commodity is not resold to or used by others. The business of any public utility other than of the character described in subdivisions 1 to 5, inclusive, of Subdivision (d) of this Section is not subject to the provisions of this Act.

(e) The term "rate," when used in this Act, means and includes every compensation, charge, fare, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity, herein regulated, offered by it to the public for compensation.

(f) The word "Commission," when used in this Act, shall refer to the Public Utilities Commission of Texas unless otherwise indicated.

Article II. Organization of Commission.

Section 1. (Commission—Appointment—Term.) A Commission to be known as the "Public Utilities Commission of Texas," is hereby created. It shall consist of three

members, who shall be appointed by the Governor with the approval of the Senate, and who shall have and exercise the jurisdiction and powers herein conferred upon the Commission. Immediately after this Act takes effect, the Governor shall, with the approval of the Senate, appoint one member of the Commission whose term shall expire two years after appointment; one member whose term shall expire four years after appointment; and one member whose term shall expire six years after appointment. At the expiration of each of the above named terms, there shall be appointed in the same manner one member of the Commission to hold office for a term of six years. Each Commissioner shall hold office until his successor is appointed and qualified. The Governor shall appoint one member Chairman of the Commission.

Sec. 2. (Oath of Office—Eligibility). Before entering upon the duties of his office, each Commissioner shall take and subscribe to the Constitutional oath of office, and shall, in addition thereto, swear that he is not pecuniarily interested in any public utility, as herein defined, as employee, stockholder, security holder or bond holder, and if any such Commissioner thereafter voluntarily becomes thus pecuniarily interested in any public utility, he shall be subject to removal from his office by the Government; and no Commissioner shall be eligible to hold any other public office for two years after he has ceased to be a member of such Commission, provided that no person appointed as a Commissioner shall be eligible to hold elective office within this State within two years after his appointment as such Commissioner. One of the Commissioners shall be a practicing lawyer of not less than fifteen years' experience at the bar, two of which years actual experience shall have been in utility matters; one shall be a graduate engineer with at least ten years' experience in general construction; and the other shall have had at least ten years' actual experience in business; provided, however, no person shall be eligible for appointment on such Commission who has within two years next preceding his appointment held an elective State office.

Sec. 3. (Vacancies.) Whenever a vacancy in the office of Commissioner occurs, it shall be filled in the manner provided herein with respect to original appointment, except that the Governor may make interim appointments, to continue until the vacancy can be filled in the manner provided; and any person appointed to fill a vacancy shall hold office during the unexpired portion of the term.

Sec. 4. (Secretary). The Commission shall appoint a Secretary, who shall hold office during its pleasure. It shall be the duty of the Secretary to keep a full and true record of all proceedings of the Commission, and to perform such other duties as the Commission may prescribe.

Sec. 5. (Salaries). The annual salary of each Commissioner shall be \$8,000.00. The Commission shall, on assuming office, appoint the following:

(a) A Commission Counsel, who shall be a licensed attorney with at least ten years actual experience in utility matters, at a salary not to exceed \$7,500.00 per annum;

(b) A Chief Engineer at a salary not to exceed \$7,500.00 per annum;

(c) A Chief Accountant at a salary not to exceed \$5,000.00 per annum;

(d) A Secretary at a salary not to exceed \$3,600.00 per annum;

(e) An official Reporter at a salary not to exceed \$3,000.00 per annum;

(f) When, as and if needed, and temporarily if need be, the Commission may appoint such examiners as it may require, not to exceed fifteen at a salary of \$3,000.00 each per annum, and also assistant counselors, not to exceed three, at a salary of \$3,600.00 each per annum, and assistant engineers, not to exceed fifteen, at a salary of \$3,600.00 each per annum;

(g) The Commission may, whenever the need therefor shall in its opinion exist, employ such stenographers, bookkeepers and clerical assistants as it thinks necessary, each of whom shall receive a salary not to exceed \$1,800.00 per annum.

The Commission shall have the right to discharge any employee or appointee.

Sec. 6. (Legal Representation).

The Commission Counsel, as provided in Section 5 above, shall represent the Commission in all legal proceedings coming before it and to which it may be made a party. The Commission may, when in its discretion occasion demands it, require the Attorney General to aid the Commission Counsel in proceedings coming before it or to which it may be made a party and it shall be the duty of the Attorney General of Texas, upon the request of the Commission, to appear and represent the Commission in all actions and proceedings involving any question arising under this Act and shall aid in any investigation or hearing had under the provisions hereof, the Attorney General shall perform such duties and services in connection with this Act and the enforcement thereof as the Commission may require. He shall also bring all actions to collect penalties herein provided.

Sec. 7. Any investigation or inquiry, which the Commission has the power to undertake, may be made by any member or members of the Commission or by an examiner designated by the Commission for that purpose. One or more examiners may sit with the Commission in all hearings, but at least one member of the Commission shall be present, preside and make all rulings at all hearings provided herein. In any proceeding docketed by the Commission, the Commission may designate an examiner to take testimony after reasonable notice to all interested parties of the time and place of taking such testimony, which testimony when transcribed and certified as correct by the examiner before whom the same is taken, may be introduced in evidence at any hearing before the Commission in such proceeding in the same manner and subject to the same conditions as if the witnesses whose testimony was so taken were present and testifying before the Commission.

Sec. 8. The principal office of the Commission shall be in the City of Austin, Texas, and shall be open daily during the usual business hours, Sundays and Legal Holidays excepted. The Commission shall hold meetings at its office and at such other convenient places in the State as shall be expedient and

necessary for the proper performance of its duties.

Sec. 9. (Seal). The Commission shall have a seal bearing the following inscription: "Public Utilities Commission of Texas." The seal shall be affixed to all authentications of copies of records and to such other instruments as the Commission shall direct. All courts of this State shall take judicial notice of said seal.

Sec. 10. (Quorum). A majority of the Commissioners shall constitute a quorum for the transaction of any business for the performance of any duty or for the exercise of any power of the Commission. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. The act of a majority of the Commissioners shall be the act of the Commission; but any investigation, inquiry or hearing which the Commission has power to undertake or hold may be undertaken or held by or before any Commissioner or Commissioners or examiner designated for the purpose by the Commission. The evidence in any investigation, inquiry or hearing may be taken by the Commissioner or Commissioners or examiner to whom such investigation, inquiry or hearing has been assigned. Every finding, opinion and order made by the Commissioner or Commissioners, so assigned, pursuant to such investigation, inquiry or hearing, when approved or confirmed by the Commission shall be the finding, opinion and order of the Commission.

Sec. 11. (Reports and Records). All decisions and orders of the Commission shall be public records. The Commission shall make and submit to the Governor, on or before the first day of December each year, a report containing a full and complete account of its transactions and proceedings for the preceding fiscal year, together with such other facts, suggestions and recommendations as it may deem of value to the people of the State.

Article III. Jurisdiction.

Section 1. Subject to the limitations imposed in this Act, and for the purpose of regulating the rates and services rendered and to be rendered, so that such rates and

services may be just, reasonable, adequate and efficient, the Commission shall have original jurisdiction over all public utilities in this State except those operated by municipalities as the exclusive means or agency through which such utility service is rendered.

Article IV. Duties and Restrictions Imposed Upon Public Utilities.

Section 1. (Rates.) Every rate made, demanded or received by any public utility or by any two or more public utilities jointly, shall be just and reasonable.

Sec. 2. (Service). Every public utility shall furnish adequate, efficient and reasonable service.

Sec. 3. (Schedules). Under such rules and regulations as the Commission may prescribe, every public utility of which the Commission has jurisdiction shall file with the Commission, within such time and in such form as the Commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected and enforced, and statements showing all rules, regulations and other requirements and practices relating to or affecting the charges, service or product furnished by such utility to the public. No schedule shall be filed containing rates higher than those in effect January 1, 1935. Such schedules and statements shall be the legal rates, rules, regulations and requirements until changed, altered, amended, suspended or discontinued by the Commission, as provided in this Act. The utility shall keep copies of such schedules open to public inspection under such rules and regulations as the Commission may prescribe.

Sec. 4. (Adherence to Schedules). It shall be unlawful for any utility to charge, collect or receive any rate other than a legal rate as herein provided, or to impose or enforce any rule, regulation or requirement other than a legal rate, rule, regulation or requirement as herein provided.

Sec. 5. (Discrimination). No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice or disadvant-

age. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any question of fact arising under this section.

Sec. 6. (Changes in Rates). Unless the Commission otherwise orders, no public utility shall make any change in any rate which has been duly established under this Act, except after thirty days notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The utility shall also give such notice of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time, and kept open to public inspection.

The Commission for good cause shown, may allow changes in rates, without requiring the thirty days notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

Whenever there is filed with the Commission by any public utility any schedule stating a new rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates; and pending such hearing and decision thereon the Commission, upon filing such schedule and delivering to the utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than ninety (90) days beyond the time when such rate or rates would otherwise go into effect, unless the Commission shall find that a longer time will be required, in which case the Commission may extend the period for not to exceed six (6) months; provided, and notwithstanding any such order of suspension, the public utility may put such suspended rate or rates into effect on the date when it or they would have become effective, if not

so suspended, by filing with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess, if the rate or rates so put into effect are finally determined to be excessive, or there may be substituted for such bond other arrangements satisfactory to the Commission for the protection of the parties interested. If the public utility fails to make refund within thirty (30) days after such final determination any person entitled to such refund may sue therefor after refusal or failure to pay on request in any court of this State of competent jurisdiction and be entitled to recover, in addition to the amount of the refund due, all court costs and reasonable attorney's fees, but no suit may be maintained for that purpose unless instituted within two (2) years after such final determination. Any number of persons entitled to such refund may join as plaintiffs and recover their several claims in a single action; in which action the court shall render a judgment severally for each plaintiff as his interest may appear. During any such period of suspension the Commission may, in its discretion, require that the public utility involved shall furnish to its consumers or patrons a certificate or other evidence of payments made by them under the rate or rates which the public utility has put into operation in excess of the rate or rates in effect immediately prior thereto. In all instances where a bond is provided for in this Act the Utility may at its option deposit in lieu thereof cash or securities to be approved by the Commission.

If after such hearing the Commission shall find any existing rate or rates to be unjust, unreasonable or discriminatory, or in any wise in violation of the law, the same shall be set aside and in such order the Commission shall substitute therefor and prescribe just and reasonable rates to be charged by the utility for the service in question, and shall make and file its conclusions and findings supporting such order. A copy of such order shall be served

upon the utility in the manner herein provided and the rates, rules and regulations therein prescribed shall thereafter be the legal rates, rules and regulations until changed as herein prescribed, except when suspended in accordance with the terms of this Act.

Sec. 7. In addition to the powers and duties of the Commission enumerated in the foregoing sections, the Commission, in fixing rates, shall have the authority to determine the reasonableness of any expenditure by any utility to any other corporation for supervision or advice with reference to management, engineering or finance, or the reasonableness of any expenditure to any corporation for its service in the purchase of any goods, wares, merchandise, equipment or property, or the reasonableness of any contract for the sale or purchase of any commodities or service for resale to the public. The Commission may refuse to allow as a proper item of operating expense of a utility such portion of any such expenditures as it may find to be unreasonable; provided, however, that if such proposed contract for such services is first submitted to the Commission and approved by it, the expenditures shall be allowed as a reasonable operating expense, and provided further that the Commission may, after notice and hearing, withdraw its approval of such contract and discontinue the allowance of such expenditure, or any part thereof, as a proper operating expense if, upon actual experience under such contracts, it appears that the payments provided for are unreasonable or unnecessary, in whole or in part.

Sec. 8. Subject in all cases to the approval of the Commission, rates and service regulations may be established by contract between a municipality and a public utility for a specified term, not exceeding ten (10) years, but only by and with approval of the Commission to be expressed by its order, and public utilities may contract with each other and with persons who are not public utilities in respect to the use of their properties and facilities, the sale or exchange of gas, electricity or other products or commodities, otherwise than pursuant to established rates, the distribution to the public of such

products and commodities jointly or singly, and the territory within which such joint or single service shall be rendered and other matters deemed to be of mutual advantage or to the advantage of the public. But no person shall participate in such distribution to the public who is not a public utility or municipality. Any two or more public utilities furnishing like service in the same city or locality may merge or consolidate their facilities or any part thereof, or any such public utility may lease, sell or otherwise dispose of its plant or business or any part thereof to any other public utility doing, or authorized to do, a like business within such city or locality; provided the Commission, after notice and hearing, determines such consolidation, merger, sale, lease or other disposition to be in the public interest and enters an order approving the same, and it shall be lawful to carry out such agreement as approved; provided, further, that no municipality shall sell or dispose of a municipally owned utility without first obtaining the approval of a majority of the qualified voters of such city or town at an election held for that purpose.

Article V. Powers Conferred upon the Commission.

Section 1. (Rates Fixed on Complaint.) Whenever the Commission, after hearing had after reasonable notice upon its own motion or upon complaint, finds that the existing rates in effect and collected by any public utility for any service, products or commodity, are unjust, unreasonable, insufficient, or discriminatory, or in any wise in violation of any provisions of law, the Commission shall determine the just, reasonable and sufficient rates to be thereafter observed and in force, and shall fix the same by order as hereinafter provided, and such rates shall thereupon become the legal rates to be charged and paid until changed, unless suspended as herein provided.

Sec. 2. (Sliding Scale of Rates.) Nothing in this Act shall be taken to prohibit a public utility from establishing a sliding scale of charges; provided, that a schedule showing the scale of charges under such arrangement is first filed with the Commission and such schedule and

each rate set out therein approved by it. Nothing in this Section shall prevent the Commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, if after reasonable notice and hearing the Commission finds the existing rates or charges unjust, unreasonable, insufficient or discriminatory.

Sec. 3. (Joint Use of Telephone Facilities.) The Commission may, upon complaint in writing by any person or on its own initiative after a hearing on reasonable notice, by order require any two or more telephone companies whose lines or wires form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections or the joint use of equipment, or the transfer of messages at common points, between different localities which cannot be communicated with or reached by the lines of either company alone, where such service is not already established or provided, to establish and maintain through lines within the State between two or more such localities. The rate for such service shall be just and reasonable and the Commission shall have power to establish the same, and declare the portion thereof to which each company affected thereby is entitled and the manner in which the same must be secured and paid. All necessary construction, maintenance and equipment in order to establish such service shall be constructed and maintained in such manner and under such rules, with such division of expenses and labor as may be required by the Commission.

Sec. 4. (Service Fixed on Complaint.) Whenever the Commission after a hearing after reasonable notice and upon its own motion or upon complaint, finds that the service of any public utility is unreasonable, unsafe, inadequate, insufficient or unreasonably discriminatory, the Commission shall determine the reasonable, safe, adequate, sufficient service to be observed, furnished, enforced or employed and shall fix the same by its order, rule or regulation.

Sec. 5. (Standards of Service.) The Commission may, after hearing upon reasonable notice and upon its own motion or upon complaint, ascertain and fix just and reasonable

standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all public utilities; ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any and all public utilities; prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement; and provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any public utility.

Sec. 6. (Valuation.) The Commission may, on hearing after reasonable notice, ascertain and fix the value of the whole or any part of the property of any public utilities in so far as the same is material to the exercise of the jurisdiction of the Commission, and may make revaluations from time to time and ascertain the value of all new construction, extensions and additions to the property of every public utility. Any valuation or revaluation made by the Commission shall list, classify and evaluate the property in conformity with the classification of fixed capital expenditures prescribed by the Commission for the keeping of utility accounts, and in valuing such property, the Commission shall give due consideration to the elements of value recognized by the law of the land governing the fixing of rates for utility service.

Sec. 7. (System of Accounts.) The Commission may establish a system of accounts to be kept by the public utilities, subject to its jurisdiction, or may classify said public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept; provided, that such accounting systems shall not be in conflict with the rules and regulations on accounting established by the Federal Communications Commission, or other Federal Board or Commission having jurisdiction, and

compliance with said rules and regulations of said Federal bodies shall be deemed a compliance with the rules and regulations of the State Commission made hereunder.

Sec. 8. (Authority to Enter Premises.) The Commissioners and the officers and employees of the Commission may, during all reasonable hours, enter upon any premises occupied by any public utility, for the purpose of making the examination and tests and exercising any power provided for in this Act, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examination, tests and inspections.

Sec. 9. (Reports.) The Commission may cause any public utility to file annual reports in such form and of such content as the Commission may require, and special reports concerning any matter about which the Commission is authorized to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the Commission.

Sec. 10. (Investigation.) The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of public utilities or any particular utility. In conducting such investigations the Commission may proceed either with or without a hearing, as it may deem best, but it shall make no order without affording the parties affected thereby a hearing.

Sec. 11. Municipalities owning and/or operating their utility or utilities, and enjoying a monopoly in such business, shall be required to make annual reports to the Commission on or before the first day of February each year, showing, in accordance with the details of any classification of accounts required of other utilities, gross revenues, operating expenses, including cost and renewals, extensions and improvements, all expenditures on capital account and for interest on indebtedness, and the nature and amount of service furnished. Such reports shall be furnished by the governing bodies of such municipalities, signed by the mayor, and in addition to the above requirements shall include

such other information as the Commission may deem necessary to establish a yard stick for the cost of service by such municipally owned utilities and to establish dependable comparisons as to the cost of the service between municipally owned plants and privately owned utilities.

Upon complaint of any interested party the Commission may inquire into the accuracy or completeness of any report required of municipalities under the provisions of this Act, and may require such additional reports and information as in its opinion may be necessary to set up a proper yard stick of costs as herein contemplated. The Commission shall have the authority, upon its own motion, or the complaint of any citizen of any municipality, after notice and hearing, to enter an order requiring such municipality to comply with the provisions of this section. Any mayor, city official, manager, superintendent, or other person charged with the duty of operating and managing such municipal utility who shall refuse to comply with any order of the Commission, or who violates any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned in the County Jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

Article VI. The Utility Franchise.

Section 1. (New Construction.) No public utility shall hereafter begin the construction or operation of any public utility plant or system, or of any extension thereof, without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction or operation; provided, that no municipality shall be required to obtain such certificate, and provided that this section shall not be construed to require any public utility to secure a certificate for an extension within any municipality or district within which it has heretofore lawfully commenced operations or for an extension within or to territory already served by it, necessary to the ordinary course of its business, or for an extension into

territory contiguous to that already occupied by it and not receiving similar service from another utility; but if any public utility in constructing or extending its line, plant or system unreasonably interferes, or is about to unreasonably interfere, with the service or system of any other public utility, the Commission on complaint of the public utility claiming to be injuriously affected may, after hearing on reasonable notice, make such order and prescribe such terms and conditions in harmony with this Act as are just and reasonable.

Sec. 2. (Exercise of Rights.) No public utility shall hereafter exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege.

Sec. 3. (Certificates — Application.) Before any certificate may issue under this section, a certified copy of its articles of incorporation and charter, if the applicant be a corporation, shall be on file in the office of the Commission. Every applicant for a certificate shall give such notice of its application as the Commission may require and shall file in the office of the Commission such evidence as shall be required by the Commission to show that such applicant has received the consent, franchise, permit, ordinance, vote or other authority of the proper municipality or other public authority, if required. A certificate shall be granted if the Commission after a hearing finds that the existing plant and facilities are inadequate, and cannot be made adequate within a reasonable time by the existing utility, acting pursuant to the orders of the Commission in the exercise of the powers herein granted the Commission, and that by reason of the inadequate facilities the public interest demands the construction and operation of the plant or facility set forth in the application of such certificate, then the Commission shall make and file its findings and conclusions with respect thereto, and shall grant to the applicant therefor a certificate of public convenience

and necessity. The Commission may, after hearing, issue said certificate as prayed for, or refuse to issue the same, or issue it for the construction or operation of a portion only of the contemplated facility, line, plant or system, or extension thereof, or for the partial exercise only of said rights or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions in harmony with this Act as in its judgment the public convenience and necessity may require. If such public utility desires to exercise a right or privilege under a franchise, permit, ordinance, vote or other authority which it contemplates securing, but which has not yet been granted to it, such public utility may apply to the Commission for an order preliminary to the issue of the certificate. The Commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after such public utility has obtained the contemplated franchise, permit, ordinance, vote or other authority, upon the presentation to the Commission of evidence satisfactory to it that such franchise, permit, ordinance, vote or other authority has been secured by such public utility, the Commission shall thereupon issue such certificate. Whenever a public utility is engaged, or is about to engage, in construction or operation without having secured a certificate of public convenience and necessity as required by the provisions of this Act, any interested person may file a complaint with the Commission. The Commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction or operation until the Commission makes and files its decision on said complaint or until the further order of the Commission. The Commission may after hearing, after reasonable notice, make such order and prescribe such terms and conditions in harmony with this Act as are just and reasonable.

Sec. 4. (Duplication of Plant and Equipment by a Municipality.) If a municipality is being adequately served by a public utility occupying

the streets by virtue of a franchise or permit running for a definite period of time, and service is being furnished at rates fixed by the Commission and in compliance with its rules and regulations, such a municipality shall not begin the construction or operation of any public utility plant or system for the purpose of supplying a like service until it shall have filed with the Commission an offer in writing to purchase the plant, properties and facilities of the utility rendering such service in such territory or locality, and to pay in cash a just compensation therefor. And if such compensation cannot be agreed upon by and between the parties, the amount thereof shall be determined by the Commission, as provided in Section 9 of this Article; provided, that if the utility owning such plant, properties and facilities, and rendering such service shall fail or refuse within thirty (30) days, after such value shall have been determined by the Commission, to accept the same, and transfer said properties, the municipality desiring to construct such plant, or to make such extensions, shall be relieved of any obligation to purchase such plant and facilities, as herein provided. Any utility refusing to convey its facilities to such a municipality at the price fixed by the Commission shall not thereafter be allowed to recoup in other cities or towns on its system any losses it may suffer in said city or town because of municipal competition. Nothing herein shall be construed as depriving a municipality of its rights to acquire such plant, properties and facilities through the exercise of its power of eminent domain, nor of depriving the utility owning such plant, properties and facilities of the right to have the same so acquired, and the just compensation to be paid therefor to be determined in a condemnation proceeding in accordance with the general laws of this State.

Sec. 5. (Indeterminate Permits). Any public utility operating under existing license, permit or franchise heretofore granted by the state or any municipality to occupy the streets or highways for the purpose of carrying on any of the public services defined in this Act, shall, upon filing with the Commission a written declaration that it surrenders such license, permit or franchise, receive by opera-

tion of law an indeterminate permit for a period of not exceeding fifty (50) years, which shall take the place of the surrendered license, permit or franchise, and the utility or its successors or assigns shall hold such permit in accordance with the terms, conditions and limitations of this Act and any future regulatory acts. Any public utility as herein defined that has no franchise from a city or town but has built and is maintaining and operating its plant and system in a city or town and is furnishing the people thereof with utility service, may upon written application to the Commission receive an indeterminate permit as herein mentioned, and the same shall be held by it and its successors and assigns in accordance with the terms, conditions and limitations of this Act and any future regulatory acts. Such permit shall continue in force until such time as a municipality having authority so to do shall purchase the property operated under such permit in accordance with the provisions of this Act, or until terminated according to law for misuser or non-user, or until it expires under the provisions hereof.

Sec. 6. (Future Grants—Indeterminate Permits). Every franchise hereafter granted to any public utility shall have the effect of an indeterminate permit as defined in the foregoing section.

Sec. 7. (Purchase by Municipality). Any public utility operating in a municipality under an indeterminate permit shall be deemed to have consented to the purchase of its property operated in such municipality under such permit by that municipality for just compensation and such municipality is hereby authorized to make such purchase upon notice to the public utility as herein provided.

Sec. 8 (Election for Acquisition). If a public utility operating in a municipality shall, under the provisions hereof, surrender its franchise granted by such municipality and elect to operate under an indeterminate permit as hereinabove provided, such municipality shall not engage in the business of such utility unless and until it shall have been determined by a vote of the governing body, taken after a public hearing, of which at least thirty (30) days notice has been given, to purchase the property of such public utility in the

manner hereinafter prescribed. Such determination shall become effective when ratified by a majority of the qualified voters voting at a special election to be held for that purpose not less than sixty (60) days nor more than one hundred and eighty (180) days after the affirmative vote of the governing body of such municipality shall have been taken, such election to be held in accordance with the law governing elections for the issuance of municipal bonds.

Sec. 9. (Determination of Compensation). Whenever the Commission shall have been notified by such municipality or the public utility affected that such municipality has, pursuant to law, determined to purchase the property of the public utility operated by it under the indeterminate permit in such municipality, and that the parties to such purchase and sale have been unable to agree on the amount to be paid and received therefor, the Commission shall proceed to set a time and place for a public hearing after not less than thirty (30) days notice to the utility and such municipality, upon the matter of just compensation to be paid for the taking of such property by such municipality. Within a reasonable time the Commission shall, by order, fix and determine and certify to the clerk of such municipality, to the public utility and to any bondholder, mortgagee, lienor or other interested party who has entered an appearance in the proceedings the sum to be paid to the utility as just compensation for the property used and useful in rendering the service to said city, and the municipality shall be obligated thereupon to make the payment necessary to consummate such purchase and shall be entitled to possession of such property within the limits of said city upon payment of such sum. The order of said Commission may be reviewed as hereinafter provided in this Act. The provisions of Sections 7, 8 and 9 of this Article shall apply only in the event a utility is operating under an indeterminate permit as herein provided for.

Sec. 10. (Reinstatement of Franchise). If, for any reason, other than for misuser or non-user, or through purchase of the property operated thereunder, as provided herein, any indeterminate permit held by a public utility is held to be

invalid, the public utility shall by operation of law and without further act, have reinstated in it the license, permit, franchise or franchises surrendered by it in exchange for such indeterminate permit. If such franchises or any part thereof have expired by limitation of term they shall, nevertheless, by operation of law, be extended for a period of three years from and after the date when such indeterminate permit is held to be invalid. If the public utility involved has taken such indeterminate permit as a new franchise and not in connection with the surrender of an old franchise or franchises, it shall, by operation of law, have the right to carry on its operation as embraced in such indeterminate permit, for a period of three years from the date when such indeterminate permit is declared invalid.

Article VII. Procedure Before the Commission.

Sec. 1. (Hearings). The Commission may, in addition to the hearings specially provided by this Act, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this Act and by other acts relating to public utilities. Reasonable notice of all such hearings shall be given to the person interested therein.

Sec. 2. (Rules of Hearings). All hearings, investigations and proceedings shall be governed by this Act and by rules of practice and procedure to be adopted by the Commission.

Sec. 3. (Process). The Commission and each commissioner may issue subpoenas, subpoenas duces tecum and all necessary processes in proceedings pending before it, and such processes shall extend to all parts of the state and be served by any person authorized to serve processes of courts of record.

Sec. 4. (Witnesses). The Commission and each of the commissioners, for the purpose mentioned in this Act may administer oaths, examine witnesses and certify official acts in case of failure on the part of any person or persons to comply with any lawful order of the Commission, or of any commissioner, or with any subpoena or subpoena duces tecum or in the case of the refusal of any wit-

nesses to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction or a judge thereof, may on application of the Commission or of a commissioner compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

Sec. 5. (Depositions). The Commission or any commissioner or any party to the proceedings may, in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for taking depositions in civil actions, and the Secretary of the Commission shall perform the same duties as are imposed upon clerks of the District Courts of this State.

Sec. 6. (Privilege and Immunity). No person shall be excused from testifying or from producing any book, document, paper or account in any investigation, or inquiry by, or hearing before the Commission or commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper or account, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in testimony.

Sec. 7. (Certified Copies—Evidence). Copies of official documents and orders filed or deposited according to law in the office of the Commission, certified by a commissioner or by the Secretary under the official seal of the Commission to be true copies of the originals, may be introduced in evidence in like manner as to the originals, in all matters before the Commission and in the courts of this State.

Sec. 8. (Recording Orders). Every order, finding, authorization or certificate issued or approved by the Commission under any provisions of this Act shall be in writing and

entered on the records of the Commission. A certificate under the seal of the Commission that any such order, finding, authorization or certificate has not been modified, stayed, suspended or revoked, shall be received as evidence in any proceedings as to the facts therein stated.

Sec. 9. (Fees). Witnesses who are summoned before the Commission shall be paid the same fees and mileage as are paid to witnesses in the courts of record of general jurisdiction. Witnesses whose depositions are taken pursuant to the provisions of this Act, and the officers taking the same, shall be entitled to the same fees as are paid for like service in such courts.

Sec. 10. (Inspection and Examination). The Commission, any commissioner, or any person employed by the Commission for that purpose, may at any and all times during reasonable hours inspect the accounts, books, papers and documents of any public utility. Any person other than a commissioner demanding such inspection shall produce under the seal of the Commission his authority to make such inspection.

Sec. 11. (Records without the State). The Commission may require by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records of the public utility relating to its business or affairs within the state, pertinent to any lawful inquiry and kept by said public utility in any office or place without this state, so that an examination thereof may be made by the Commission or under its directions, provided that such utility may at its option produce true copies of of any books or records so required if verified in the manner directed by the Commission.

Sec. 12. (Office in State). Every public utility as defined herein shall have and maintain an office in this State and shall keep in said office such books, accounts, papers, receipts, vouchers and records concerning its properties and business within this State as the Commission may require, providing that such requirement shall not be in conflict with rules of accounting and book-keeping required by the Interstate Commerce Commission or other Fed-

eral board or agency. No books, accounts, papers, records, receipts, vouchers, or other data required by the Commission to be so kept shall be at any time removed from this State, except upon such conditions as the Commission may prescribe.

Sec. 13. (Complaints). The Commission on its own motion or any person having an interest in the subject matter, including any utility concerned, may complain in writing setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any order or rule of the Commission.

Sec. 14. (Service on Parties). Upon the filing of a complaint, the Commission shall cause a copy thereof to be served upon the person complained of. Service in all hearings, investigations and proceedings pending before the Commission shall be made personally by some person authorized by law to serve writs of a court of record, unless such service is waived by written instrument.

Sec. 15. (Hearing). The Commission shall fix the time and place of hearing, if any is required, and shall serve notice thereof, not less than twenty (20) days before the time set for such hearing. The Commission by order duly entered may dismiss any complaint without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights.

Sec. 16. (Right to Hearing). At the time fixed for any hearing before the Commission or a commissioner, or the time to which the same may have been continued, all persons interested in such controversy shall be entitled in person or by attorney to be heard and to introduce evidence.

Sec. 17. (Joint Hearings). In the discharge of its duties under this Act the Commission may cooperate with similar commissions of other states and of the National Government and may hold joint hearings and make joint investigations with such commissions.

Sec. 18. (Decisions). After the conclusion of the hearings, the Commission shall make and file its find-

ings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on appeal to determine the controverted questions presented by the proceeding, and whether proper weight was given to the evidence. A copy of such order certified under the seal of the Commission, shall be served upon the person against whom it runs, or his attorney and notice thereof shall be given to the other parties to the proceedings or their attorneys. Said order shall take effect and become operative thirty (30) days after the service thereof, and shall continue in force, either for a period which may be designated therein or until changed or revoked by the Commission, unless suspended by appeal as herein provided. If an order cannot, in the judgment of the Commission, be complied with within thirty (30) days, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order.

Sec. 19. (Alteration of Orders). The Commission may at any time, after notice, and after opportunity to be heard as provided in the case of complaints, rescind or amend any order or decision made by it. Any order rescinding, or amending a prior order or decision shall, when served upon the utility affected and after notice thereof is given to the other parties to the proceedings, have the same effect as is hereby provided for original orders or decisions, but no such order shall affect the legality or validity of any acts done by said utility before service upon it of the notice of such change.

Sec. 20. (Record of Proceedings). A full and complete record shall be kept of all proceedings had before the Commission or any commissioner of any formal hearing, and all testimony shall be taken down by a reporter appointed by the Commission, and all the parties shall be entitled to be heard in person or by attorney.

Sec. 21. (Rehearing). After an order or decision has been made by the Commission, any party to the proceeding may within ten (10) days after the entry of the order or

decision apply for a rehearing in respect of any matters determined in said proceedings and specified in the application for rehearing, and the Commission may grant and hold such rehearing on such matters.

The Commission shall either grant or refuse an application for rehearing within twenty (20) days; and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof. If the application is granted, the Commission's order shall be deemed vacated, and the Commission shall enter a new order after the rehearing shall have been concluded, which shall become effective twenty (20) days after service of a copy thereof upon the utility.

Article VIII. Review and Enforcement of Commission's Orders.

Section 1. (Review by petition in District Court). Any party to any proceeding before the Commission may file a petition in the District Court of Travis County against the Commission to review any order made by the Commission. If an application for rehearing has been filed, such petition for review must be filed within sixty (60) days after the application for rehearing has been refused or deemed refused because of the Commission's failure to act thereon within the time specified in the preceding section. If an application for rehearing has not been filed, the petition for review must be filed in sixty (60) days after the entry of the Commission's order. Every petition for review shall state clearly the nature of the proceedings before the Commission and shall set forth the order complained of and the specific grounds upon which the same is claimed to be unlawful and upon which the petitioner will rely. No petitioner shall be permitted to urge any grounds not clearly and specifically set forth in his petition for review, provided he shall not be denied the right to amend his petition before trial with the permission of the trial judge before whom said cause is pending. Such action shall have precedence on the docket over all other causes of a different nature, and if the court is in session shall stand ready for trial within twenty (20) days after service of notice

upon the adverse parties to the suit; and said cause shall be tried in the same manner as all other civil cases. Any party to said proceeding shall have the right to appeal to the Court of Civil Appeals and to have the final judgment of the Court of Civil Appeals reviewed by the Supreme Court on writ of error from the Supreme Court under, except as herein provided, the statutes and rules governing appeals from a judgment of the District Court to the Court of Civil Appeals and review on writ of error of judgments of the Court of Civil Appeals by the Supreme Court, the Courts of Civil Appeals and the Supreme Court being hereby expressly invested respectively with jurisdiction of such appeals from the District Court and of review by writ of error of such judgments of the Court of Civil Appeals; provided, that the appeal to the Court of Civil Appeals shall be perfected by the filing within thirty (30) days from the final judgment of the District Court of a cost bond on appeal as provided by law for appeals from judgments of the District Court to the Court of Civil Appeals and the Supreme Court, and provided further that a motion for a new trial may be filed in the District Court but it shall not be necessary to do so; and such causes so appealed shall have precedence in the Court of Civil Appeals and the Supreme Court.

Sec. 2. (a) (Review by Appeal to Court of Civil Appeals). When the parties to any proceeding before the Commission shall file with the Court of Civil Appeals at Austin a stipulation that the right of a trial in District Court is waived, said Court of Civil Appeals shall have jurisdiction to review the orders and decrees of the Commission, and any party to any proceeding before the Commission may file a petition in the Court of Civil Appeals at Austin asking for a review of any order of the Commission when such petition is accompanied by an agreement signed by the parties to the proceeding as above provided. In such case, if an application for rehearing has been filed, such petition for review must be filed within twenty (20) days after the application for rehearing has been refused or deemed refused because of the Commission's failure to act thereon

within the time specified in Section 21 of the preceding Article. If an application for rehearing has not been filed, such petition for review must be filed within twenty (20) days after the entry of the Commission's order. Every such petition for review shall state clearly the nature of the proceedings before the Commission, the result thereof, and shall set forth the matters complained of and the specific grounds upon which the same is claimed to be unlawful, and upon which the petitioner will rely in said Court. No petitioner shall be permitted to urge any grounds not clearly and specifically set forth in his petition for review.

(b) Upon the filing of a petition for review in the Court of Civil Appeals, the Clerk of the Court shall serve notice thereof upon the Commission, whereupon the Commission shall within thirty (30) days from the service of such notice, certify to the Court of Civil Appeals the record in the case, which record shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties to the proceeding may agree that a specified portion only of the record shall be certified to the Court of Appeals as the record on review.

(c) No new or additional evidence shall be introduced in the Court of Civil Appeals, but the case shall be determined upon the record and the evidence certified to the Court.

(d) The court may dismiss the petition for review, or vacate the order complained of in whole or in part, as the case may be; but in case the order is wholly or partly vacated the court may also, in its discretion, remand the matter to the Commission for such further proceedings, not inconsistent with the decree as in the opinion of the court justice may require. The order of the Commission shall not be vacated or set aside either in whole or in part, except for errors of law, unless the court finds that the finding of the Commission is contrary to the manifest weight of the evidence, or violates constitutional rights.

Sec. 3. (Appeal to the Supreme Court). Any judgment or order of

the Court of Civil Appeals on petition for review from the Commission, or on appeal from the District Court, may be reviewed by the Supreme Court in the same manner as provided in other civil cases, provided, however, that such cases shall have precedence over all cases of a different nature pending in said court.

Sec. 4. (Stay of Orders). The pendency of proceedings to review by way of appeal, shall not of itself stay or suspend the operation of the order of the Commission, but during the pendency of such proceeding the District Court, Court of Civil Appeals, or Supreme Court, as the case may be, may, in its discretion, stay or suspend, in whole or in part, the operation of the Commission's order on such terms as it deems just, and shall act in accordance with the practice of courts exercising equity jurisdiction. Any party shall have the right to secure from the court in which a review of, or appeal from, an order or judgment is sought, an order suspending or staying the operation of an order appealed from or sought to be reviewed pending a review of such order or appeal therefrom by adequately securing the other parties against loss due to the delay in the enforcement of the order, in case the order under review is affirmed, the security to take such form as shall be directed by the court granting the stay or suspension.

Sec. 5. (Enforcement Proceedings). Whenever the Commission shall be of the opinion that any person or utility is failing or omitting or about to fail or omit to do anything required of it by this Act, or by any order of the Commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of this Act, or of any order of the Commission, it may direct the Attorney General to commence an action of proceedings in any court of competent jurisdiction in and for Travis County, Texas, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The jurisdiction herein given to the courts of competent jurisdiction in and for Travis County, Texas, shall be ex-

clusive and the courts of no other county in this State shall exercise jurisdiction in proceedings covered by this section. The Attorney General shall thereupon begin such action or proceeding by petition to such court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty (20) days after the service of the copy of the petition, within which the public utility or person complained of must plead, and in the meantime said public utility or person may for good cause shown be restrained. In case of default, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken as in other civil actions.

Sec. 6. (Burden of Proof). In all actions and proceedings arising under the provisions of this Act or growing out of the exercise of the authority and powers herein granted to the Commission, the burden of proof shall be on the party seeking to have vacated an order of said Commission to show that the same is unlawful or unreasonable.

Sec. 7. (Violations). Any person or corporation which violates any provisions of this Act, or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the Commission is subject to a penalty of not less than One Hundred Dollars (\$100.00), nor more than One Thousand Dollars (\$1,000.00) for each offense.

Sec. 8. (Violation by Officers and Employees). In construing and enforcing the provisions of this Act relating to penalties, the Act, omission or failure of any officer, agent or employee of any corporation or

person acting within the scope of his official duties or employment shall in every case be deemed to be also the act, omission or failure of such corporation or person.

Sec. 9. (Continuing Violation.) Every violation of the provisions of this Act or of any lawful order of the Commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be deemed a separate and distinct offense.

Sec. 10. (Penalties Cumulative). All penalties accruing under this Act shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeitures or be a bar to any criminal prosecution against any public utility or any officer, director, agent or employee thereof or any other corporation or person.

Sec. 11. (Suits for Penalties). Actions to recover penalties under this Act shall be brought in the name of the State of Texas in a court of competent jurisdiction in Travis County, Texas.

Article IX. Revenues.

Sec. 1. On the first day of July next after this Act shall take effect, and quarterly thereafter, every public utility in this State, subject to the jurisdiction of the Commission, as herein defined, shall file with the Treasurer of the State a report duly verified by the affidavit of its President, Secretary or General Manager, of its gross receipts from its utility services for the quarter next preceding. Upon the filing of its first quarterly report, as herein provided, each public utility shall pay into the Treasury of the State a sum in cash equivalent to one-fourth of one per cent. ($\frac{1}{4}$ of 1%) of such gross receipts for the preceding quarter, as shown by such report, and the money so paid shall be by the State Treasurer credited to and deposited in the Public Utilities Commission Fund; said tax to be in lieu of all other taxes heretofore levied for the purpose of providing funds to aid in regulating the utilities embraced within the provisions of this Act. Thereafter, upon the filing of each

quarterly report, the Commission shall notify the public utility to pay into the Treasury of the State, to be credited to the Public Utilities Commission Fund, a sum in cash, not exceeding one-fourth of one per cent. ($\frac{1}{4}$ of 1%) of such gross receipts, for the preceding quarter as shown by such report.

Sec. 2. Within fifteen (15) days after the date of the mailing of any bills as provided in Section 3 of this Article the public utility, against which such bill has been rendered, may file with the Commission objections setting out in detail the grounds upon which said objections are made, and upon which said objector regards said bill to be excessive, erroneous, unlawful or invalid. The Commission after notice to the objector, shall proceed forthwith to hold a hearing upon such objections, not less than five (5) days nor more than ten (10) days after such notice. If after such hearing the Commission finds any part of said bill to be excessive, erroneous, unlawful or invalid it shall record its findings upon its minutes and transmit to the objector by registered mail an amended bill, in accordance with such findings. Such amended bill shall have in all ways the same force and effect as an original bill. If after such hearing the Commission finds the entire bill unlawful or invalid it shall notify the objector by registered mail of such determination, in which case said original bill shall be deemed null and void. If after such hearing the Commission finds that the bill as rendered is neither excessive, erroneous, unlawful nor invalid either in whole or in part, it shall record such findings upon its minutes, and transmit to the objector by registered mail notice of such finding. If any bill against which objections have been filed shall not be paid within ten (10) days after notice of the finding that such objections have been overruled and disallowed by the Commission has been mailed to the objector as herein provided, the Commission shall give notice of such delinquency to the State Treasurer and to the objector. The State Treasurer shall then proceed to collect the amount of said bill as provided in Section 3 of this Article. If an amended bill is not paid within ten (10) days after a copy thereof is mailed to the objector by registered mail, the Com-

mission shall notify the State Treasurer and the objector as in the case of delinquency in the payment of an original bill. The State Treasurer shall then proceed to collect the amount of said bill as provided in the case of an original bill. No suit or proceeding shall be maintained in any court for the purpose of restraining or in any wise delaying the collection of payment of any bill rendered under Sections 2, 3 and 4 of this Article. Every public utility paying any sum under protest may, at any time within six (6) months from the date payment was made, sue the State in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that said assessment was erroneous or unlawful in whole or in part. If it is finally determined in such action that any part of the bill for which payment was made was erroneous or unlawful, the State Treasurer shall make a refund to the claimant out of the Suspense Fund herein provided for. No action for recovery of any amount paid pursuant to this section shall be maintained in any court unless objections have been filed with the Commission as herein provided. Any amounts paid under protest shall not be placed in the Treasury, but shall be placed in the Suspense Fund provided for in Article —, Acts of the Legislature, and if no suit is filed to recover the same within six (6) months, said amount shall be transferred to the General Utility Fund. If such suit is filed before the expiration of six (6) months, said sum shall be held in the Suspense Fund pending final outcome of said suit.

Sec. 3. Amounts assessed against any public utility, either under Section 2 or Section 3 of this Article, not paid after thirty (30) days after the mailing of a registered letter notifying the public utility of the amount assessed against it, shall draw interest at the rate of ten per cent (10%) per annum and upon failure to pay the same the Attorney General shall proceed by action in the name of the State against such public utility to collect the amount due, together with interest and the cost of the suit. All assessments hereunder shall be a first lien upon all property of the public utility against which the assessment is made, prior to all other liens, debts, claims or

demands whatsoever; such lien may be enforced in any action brought in a district court of Travis County or in any court of competent jurisdiction in any county in which the property is located, and the place of trial of said action shall not be changed from the county in which it is commenced, except upon consent of the parties.

Article X. Miscellaneous.

Section 1. (Interstate Commerce.) Neither this Act nor any provision thereof shall apply, or be construed to apply, to commerce with foreign nations or commerce among the several states of this Union, except in so far as may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

Sec. 2. (Reservations.) This Act shall never be so construed as to authorize or empower the Commission in the exercise of its jurisdiction to alter, change, modify or amend any profit-sharing franchise, contract or agreement, or any provision thereof, heretofore granted, made or entered into by and between a municipality and any utility, without the consent of the governing body of such municipality, and nothing herein shall be so construed as to deprive such municipalities of the right, power and authority now conferred by statute or charters to extend, modify, renew or revise such contracts and agreements with the public utilities serving them upon such terms and conditions as said municipalities may prescribe. Nothing herein shall be construed as superseding, modifying, or annulling the provisions of any franchise heretofore granted by a municipality, reserving to such municipality or its nominee the right to purchase the plant, properties and facilities, and to terminate such franchise in the manner stipulated therein, and in such event nothing herein shall be construed as denying in any way the right of said city to prescribe the manner in which, and the compensation for which, services thereunder shall be rendered. And while any such franchises or agreements are in force, the rights and liabilities of such municipality and its inhabitants and of such utility, respectively, shall be determined by the provisions of such franchise, and the Commission in determining any

matter affecting such municipalities as come within the provisions of this section shall not have the power to set aside, or suspend, any rights, privileges or immunities reserved in this section to any utility or to any municipality, or any inhabitant thereof. Nothing herein shall be construed so as to authorize or empower the Commission to exercise jurisdiction conferred upon it herein with respect to the regulation of the sale of gas by private contract for industrial purposes, unless in a rate proceeding it is determined that the rate agreed upon and charges made under such special contract is less than the cost of production and results in an increase in the rates or charges made to domestic consumers.

Sec. 3. (Unconstitutionality.) If any part of this Act is decided to be unconstitutional and void, such decision shall not affect the validity of the remaining parts of this Act unless the part held void is indispensable to the operation of the remaining parts. The Legislature hereby declares that it would have passed those parts of this Act which are valid and omitted any parts which may be unconstitutional if it had been advised of such unconstitutionality at the time of the passage of this Act.

Sec. 4. (Short Title.) This Act may be cited as the Public Utilities Act.

Sec. 5. (Repeal.) The provisions of Title 102, Revised Civil Statutes of Texas, in so far as they conflict with the provisions of this Act are expressly repealed. The tax as provided for in Article 6060 shall be paid as provided in said article up to and including April 1, 1935, and not thereafter. All other laws and parts of laws in conflict with the provisions of this Act are hereby expressly repealed, and the duties and powers over any of the utilities coming within the provisions of this Act are hereby transferred to the Public Utilities Commission of Texas, to be hereafter exercised by it as herein directed, provided, however, that nothing herein shall be construed as mitigating or abolishing any penalty, rule or regulation imposed under existing laws, and nothing herein shall be construed so as to affect in any way any suit or cause of action now pending in any court with reference to any order or

decree of the Railroad Commission entered or to be entered before this Act shall become effective. When the commissioners herein provided for have qualified, the Railroad Commission shall deliver to the Public Utilities Commission of Texas all records, papers, documents, reports and such other data as it has on hand relating to the rates and services of any utility, the jurisdiction over which is transferred by this Act from the Railroad Commission to the Public Utilities Commission.

Sec. 6. The fact that the business of the public utilities of this State is one which affects the everyday life of the people of the State generally and that prompt action is necessary to protect the public generally in the matter of rates and charges for service rendered by such public utilities, and the fact that existing laws of this State provide for no regulatory body having a state wide general jurisdiction of all utilities, and the further fact that to protect the public interest involved it is urgent that a Public Utilities Commission be established and be immediately empowered to assume jurisdiction over the public utilities of this State and to regulate same, have created an emergency and an imperative public necessity demanding the suspension of the constitutional rule requiring bills to be read on three separate days in each House, and said rule is hereby suspended and this Act shall take effect from and after its passage, and it is so enacted.

VAN ZANDT.

Read and pending.

Privileged Motion.

Senator Pace moved that the previous question be ordered on the substitute amendment, the pending amendment and the engrossment of H. B. No. 65.

The motion was seconded.

Point of Order.

Senator DeBerry raised the point of order that the motion was out of order because the question is subject to division and you cannot move the previous question on more than one question.

The Chair overruled the point of order.

Division Called For.

Senator DeBerry called for a di-

vision of the motion for previous question.

Previous Question.

The previous question was ordered on the substitute amendment by Senator Van Zandt by the following vote:

Yeas—18.

Beck.	Neal.
Burns.	Pace.
Cotten.	Rawlings.
Davis.	Redditt.
Duggan.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Moore.	Van Zandt.

Nays—11.

Blackert.	Oneal.
Collie.	Poage.
DeBerry.	Sulak.
Hill.	Westerfeld.
Hornsby.	Woodruff.
Isbell.	

Absent—Excused.

Fellbaum.	Regan.
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The previous question was ordered on the amendment by Senator Woodruff by the following vote:

Yeas—18.

Beck.	Neal.
Burns.	Pace.
Cotten.	Rawlings.
Davis.	Redditt.
Duggan.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Moore.	Van Zandt.

Nays—11.

Blackert.	Oneal.
Collie.	Poage.
DeBerry.	Sulak.
Hill.	Westerfeld.
Hornsby.	Woodruff.
Isbell.	

Absent—Excused.

Fellbaum.	Regan.
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The previous question was ordered on the engrossment of H. B. No. 65.

Yeas—19.

Beck.	Pace.
Burns.	Rawlings.
Cotten.	Redditt.
Davis.	Sanderford.
Duggan.	Shivers.
Holbrook.	Small.
Hopkins.	Stone.
Martin.	Sulak.
Moore.	Van Zandt.
Neal.	

Nays—10.

Blackert.	Isbell.
Collie.	Oneal.
DeBerry.	Poage.
Hill.	Westerfeld.
Hornsby.	Woodruff.

Absent—Excused.

Fellbaum.	Regan.
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Motion to Recess.

Senator Collie, at 12:10 o'clock p. m., moved that the Senate recess until 2 o'clock p. m.

The motion to recess prevailed by viva voce vote.

After Recess.

The Senate met at 2 o'clock p. m., pursuant to recess, and was called to order by Senator Small.

At Ease.

On motion of Senator Poage, the Senate stood at ease for five minutes.

Point of "No Quorum."

Senator Burns raised the Point of "no quorum."

The roll call was ordered.

The roll call disclosed a quorum.

House Bill No. 65.

Pending business was H. B. No. 65.

The question recurred on the adoption of the substitute amendment by Senator Van Zandt.

The substitute amendment was adopted by the following vote:

Yeas—19.

Beck.	Holbrook.
Burns.	Hopkins.
Collie.	Martin.
Cotten.	Moore.
Davis.	Neal.
Duggan.	Pace.

Rawlings.	Small.
Redditt.	Stone.
Sanderford.	Van Zandt.
Shivers.	

Nays—9.

Blackert.	Oneal.
DeBerry.	Poage.
Hill.	Westerfeld.
Hornsby.	Woodruff.
Isbell.	

Absent—Excused.

Regan.

(Pair Recorded.)

Senator Sulak (present) who would vote nay, with Senator Fellbaum (absent) who would vote yea.

The question recurred on the adoption of the amendment to H. B. No. 65 as substituted.

Point of Order.

Senator DeBerry raised the point of order that the motion for the previous question was not ordered on the particular pending question.

The Chair, Lieutenant Governor Woodul, presiding, overruled the point of order.

The amendment as substituted was adopted by the following vote:

Yeas—17.

Beck.	Neal.
Burns.	Pace.
Cotten.	Rawlings.
Davis.	Redditt.
Duggan.	Shivers.
Holbrook.	Small.
Hopkins.	Stone.
Martin.	Van Zandt.
Moore.	

Nays—10.

Blackert.	Isbell.
Collie.	Oneal.
DeBerry.	Poage.
Hill.	Westerfeld.
Hornsby.	Woodruff.

Absent.

Sulak.

Absent—Excused.

Fellbaum.

The committee report recommending that the bill be printed was adopted by unanimous consent.

The bill was read second time as substituted and passed to third reading by the following vote:

Yeas—21.

Beck.	Pace.
Burns.	Rawlings.
Cotten.	Redditt.
Davis.	Sanderford.
Duggan.	Shivers.
Hill.	Small.
Holbrook.	Stone.
Hopkins.	Sulak.
Martin.	Van Zandt.
Moore.	Woodruff.
Neal.	

Nays—8.

Blackert.	Isbell.
Collie.	Oneal.
DeBerry.	Poage.
Hornsby.	Westerfeld.

Absent—Excused.

Fellbaum. Regan.

On motion of Senator Van Zandt the caption was amended to conform to the body of the bill.

Reason for Vote.

Mr. President: I vote "aye" on the passage of H. B. No. 65 as amended for the reason that I desire to see an effort made to provide effective regulation of rates of utility charges for service. The amendment by the Senator from Grayson County is in some particulars objectionable, but since my own amendment was rejected, I think the bill as amended should be passed as a beginning of such program of rate regulation in Texas.

WOODRUFF.

Motion to Suspend Rule.

Senator Oneal received unanimous consent to suspend the regular order and moved to suspend the constitutional rule relating to the time for the introduction of bills.

The motion prevailed by the following vote:

Yeas—29.

Beck.	DeBerry.
Blackert.	Duggan.
Burns.	Hill.
Collie.	Holbrook.
Cotten.	Hopkins.
Davis.	Hornsby.

Isbell.	Sanderford.
Martin.	Shivers.
Moore.	Small.
Neal.	Stone.
Oneal.	Sulak.
Pace.	Van Zandt.
Poage.	Westerfeld.
Rawlings.	Woodruff.
Redditt.	

Absent—Excused.

Fellbaum. Regan.

Senate Bill No. 533.

By Senator Oneal.

S. B. No. 533, A bill to be entitled "An Act to amend Article 2789 Revised Civil Statutes of 1925 as amended by Chapter 32, Acts of the regular session of the Forty-third Legislature, by making provision that refunding bonds may be issued as term or as serial bonds, maturing in either case within forty (40) years from date of issue and may be made optional on any interest payment date as the governing board shall direct, and declaring an emergency."

Read and referred to the Committee on Educational Affairs.

House Bill No. 65.

Senator Van Zandt moved that the constitutional rule requiring bills to be read on three several days be suspended and that H. B. No. 65 be put on its third reading and final passage.

The Chair informed Senator Poage that his time had expired in discussion of the motion.

The motion to suspend the rule failed by the following vote:

Yeas—21.

Beck.	Pace.
Burns.	Rawlings.
Collie.	Redditt.
Cotten.	Sanderford.
Davis.	Shivers.
Duggan.	Small.
Holbrook.	Stone.
Hopkins.	Sulak.
Martin.	Van Zandt.
Moore.	Woodruff.
Neal.	

Nays—7.

Blackert.	Isbell.
DeBerry.	Oneal.
Hill.	Poage.
Hornsby.	
Westerfeld.	Absent.

Absent—Excused.

Fellbaum. Regan.

Motion to Adjourn.

Senator Van Zandt at 4 p. m. moved that the Senate adjourn until 4:05 o'clock p. m. today.

Adjournment.

The motion prevailed by viva voce vote.

APPENDIX.

Committee on Enrolled Bills.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President
of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 52 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Room,
Austin, Texas, May 2, 1935.
Hon. Walter F. Woodul, President
of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. B. No. 510 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President
of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 53 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President
of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. B. No. 486 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President
of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. B. No. 485

carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Reports.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President of
the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred S. B. No. 532, A bill to be entitled "An Act creating the Palo Duro Canyon State Park Board; providing for the number of members of said board terms of office, the manner of appointment and the duties and responsibilities of the members; etc., and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

SMALL, Chairman.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President of
the Senate.

Sir: We, your Committee on Judicial Districts, to whom was referred

S. B. No. 468, A bill to be entitled "An Act fixing the fees and salary of the official shorthand reporter of the County Court of Jefferson County at Law, Jefferson County, Texas, and providing the manner of payment, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

MARTIN, Chairman.

Committee Room,
Austin, Texas, May 7, 1935.
Hon. Walter F. Woodul, President of
the Senate.

Sir: We, your Committee on Judicial Districts to whom was referred

H. B. No. 368, A bill to be entitled "An Act changing the time of holding the terms of the District Court in the One Hundredth Judicial District, and providing that all process and writs heretofore issued and all recognizances and bonds heretofore made and executed and returned to existing terms of district court in the counties composing said district, together with jurors heretofore se-

lected are valid and returnable to the first term of such court after this Act takes effect, and providing for the continuation of the existing district courts in said counties in session when this Act takes effect to the end of their terms; repealing all conflicting laws; fixing the effective date of the Act, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

MARTIN, Chairman.

Committee Room,

Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Judicial Districts, to whom was referred

S. B. No. 478, A bill to be entitled "An Act changing the time of holding the terms of the District Court in the One Hundredth Judicial District, and providing that all process and writs heretofore issued and all recognizances and bonds heretofore made and executed and returned to existing terms of district court in the counties composing said district, together with jurors heretofore selected are valid and returnable to the first term of such court after this Act takes effect, and providing for the continuation of the existing district courts in said counties in session when this Act takes effect to the end of their terms; repealing all conflicting laws; fixing the effective date of the Act, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

MARTIN, Chairman.

Committee Room,

Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Public Lands and Land Office, to whom was referred

H. B. No. 394, A bill to be entitled "An Act amending S. B. No. 532, Chapter 187, General Laws of the Forty-third Legislature, 1933, Regular Session, authorizing the Texas State Parks Board to acquire State

Park sites by purchase, gift, or otherwise, and to improve, beautify and equip their several State parks and to contract with reference thereto, and in payment thereof; etc., and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

REGAN, Chairman.

Committee Room,

Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Public Lands and Land Office, to whom was referred

H. B. No. 987, A bill to be entitled "An Act authorizing the Board of Regents of the University of Texas to issue surface leases for a term not exceeding ninety-nine (99) years to any university lands located in El Paso County and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

REGAN, Chairman.

Committee Room,

Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Education, to whom was referred

S. B. No. 533, A bill to be entitled "An Act to amend Article 2789 Revised Civil Statutes of 1925 as amended by Chapter 32 Acts of the Regular Session of the Forty-third Legislature, by making provision that refunding bonds may be issued as term or as serial bonds, maturing in either case within forty (40) years from date of issue and may be made optional on any interest payment date as the governing board shall direct, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

DUGGAN, Chairman.

Committee Room,

Austin, Texas, May 7, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Constitutional Amendments, to whom was referred

S. J. R. No. 21, A Joint Resolution Proposing "An amendment to the Constitution conferring upon the Legislature of this State the power to grant or authorize the granting of pensions to the deserving blind, as may be provided and regulated by law; and providing for an election upon such proposed constitutional amendment, and making an appropriation therefor."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with the attached committee amendments, and that it be printed in the Journal.

BLACKERT, Chairman.

Committee Amendment No. 1.

Amend S. J. R. No. 21 by striking out all of Section 1 and substituting in lieu thereof the following:

"Section 1. That Section 51 of Article 3 of the Constitution be amended by adding thereto the following proviso:

"Provided, further, that nothing in this Constitution shall be considered as prohibiting the Legislature from granting or authorizing the granting of pensions of not more than \$15.00 per month to indigent blind not confined in some institution supported in whole or in part by State or county taxes and not receiving any form of pension from any other source."

Committee Amendment No. 2.

Amend S. J. R. No. 21 by adding after the words "next general election" in Section 2, the following:

"to be held on the third day of November, A. D., 1936."

By Westerfeld.

S. J. R. No. 21.

A Joint Resolution

Proposing and amendment to the Constitution conferring upon the Legislature of this State the power to grant or authorize the granting of pensions to the deserving blind, as may be provided and regulated by law; and providing for an election upon such proposed constitutional amendment, and making an appropriation therefor.

Be it resolved by the Legislature of the State of Texas:

Section 1. That Section 51 of Article 3 of the Constitution be amended by adding thereto the following proviso:

"Provided, further, that nothing in this Constitution shall be considered as prohibiting the Legislature from granting or authorizing the granting of pensions to the deserving blind, as may be provided and regulated by law".

Sec. 2. The foregoing constitutional amendment shall be submitted to the qualified electors of the State at the next general election, at which election those favoring such proposed amendment shall write or have printed on their ballot:

"For the amendment to the Constitution of the State of Texas authorizing the Legislature to provide that pensions may be granted to the deserving blind";

and all those opposed shall write or have printed on their ballots the words:

"Against the amendment to the Constitution of the State of Texas authorizing the Legislature to provide that pensions may be granted to the deserving blind".

Sec. 3. The Governor is hereby directed to issue the necessary proclamation for such election and secure the publication of such proclamation as required by the Constitution and laws of this State.

Sec. 4. The sum of Two Thousand (\$2,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the Treasury not otherwise appropriated to pay the expenses of publication of said proposed amendment.

FIFTY-EIGHTH DAY.

Senate Chamber,
Austin, Texas,
May 7, 1935.

The Senate met at 4:05 o'clock p. m. pursuant to adjournment, and was called to order by Lieutenant Governor Walter F. Woodul.

The roll call disclosed a quorum, the following Senators being present:

Beck.
Blackert.
Burns.

Collie.
Cotten.
Davis.